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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to Certificate of Compliance (CoC) Number 1014. This amendment will modify the present cask system design, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment will also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to applicable CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: The final rule is effective June 10, 2002, unless significant adverse comments are received by April 26, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

CoC No. 1014, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 1, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec HI-STORM 100 cask design and added it to the list of

NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1014.

Discussion

On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. No other changes to the Holtec HI-STORM 100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Holtec HI-STORM 100 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1014. The amendment consists of changes to the Technical Specifications as described above in the ''Discussion'' portion of this document. The particular Technical Specifications that are changed are identified in the NRC staff's Safety Evaluation Report for Amendment 1.

The amended Holtec HI-STORM 100 cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of the initial certificate, and the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI-STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 26 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Holtec HI-STORM 100 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR

Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Holtec HI-STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specification for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the Holtec HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes.

The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping

requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014
Initial Certificate Effective Date: June 1, 2000
Amendment Number 1 Effective Date: June 10, 2002
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System
Docket Number: 72–1014
Certificate Expiration Date: June 1, 2020
Model Number: HI-STORM 100

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7320 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–05–AD; Amendment 39–12684; AD 2002–06–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines, installed on Airbus Industrie A330 series airplanes. This action requires initial and repetitive pressure testing of the directional pilot valve (DPV) assembly, with replacement of DPV assemblies that fail the pressure test, or, replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or, deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done. This amendment is prompted by a review of thrust reverser safety analyses following a report of inadvertent thrust reverser deployment on another make and model engine. The actions specified in this AD are intended to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Effective May 1, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA received a report of inadvertent thrust reverser deployment on a Pratt & Whitney powered Airbus Industrie A300–600 series airplane. Following that event, the FAA reviewed thrust reverser safety analyses on other make and model engines, including GE CF6–80E1 series turbofan engines that are used on Airbus Industrie A330 series airplanes. A review of thrust reverser actuation system (TRAS) shop findings and component failure rate data, test data, and system safety analyses revealed that a hidden failure mode involving the directional pilot valve (DPV) assembly exists. The DPV assembly controls the direction of the operation of the center drive unit when the TRAS is activated. If high pressure downstream of the pressure regulating and shutoff valve (PRSOV) exists in combination with a leaking DPV assembly, an inadvertent deployment could occur. High pressure downstream of the PRSOV can be caused by auto-restow of the thrust reverser, PRSOV open failures, or significant PRSOV leakage. PRSOV open failures and significant PRSOV leakage are detected by the DPV assembly pressure switch. DPV assembly open failures and significant DPV assembly leakage are detected by the inability to stow the reverser. However, there exists a range of DPV assembly leakage rates from a closed DPV assembly which are not detectable during normal operation.

This undetectable failure mode of the DPV assembly, concurrent with high pressure downstream of the PRSOV, can result in an inadvertent thrust reverser deployment. This condition, if not corrected, could result in inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, that describes procedures for thrust reverser inspections and checks, and DPV assembly replacement.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–80E1 series turbofan engines of the same type design, installed on Airbus Industrie A330 series airplanes, this AD is being issued to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane. This AD requires:

- Initial and repetitive pressure testing of the DPV assembly, with replacement of DPV assemblies that fail the pressure test, or
- Replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or
- Deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done.

The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–05–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–07 General Electric Company: Amendment 39–12684. Docket No. 2002–NE–05–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines that are installed on Airbus Industrie A330 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

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

To prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, do the following:

(a) Perform one of the following, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, before exceeding 7,000 flight hours time-since-new (TSN) or 1,000 flight hours time-in-service (TIS) after the effective date of this AD:

(1) Perform a directional pilot valve (DPV) assembly pressure check for leakage, and, if necessary, do one of the following:

(i) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser.

(b) Thereafter, at intervals not to exceed 7,000 flight hours TIS since the last check or replacement of the DPV assembly, perform one of the following, in accordance with paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001:

(1) Perform a DPV assembly pressure check for leakage, and, if necessary, either:

(i) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser.

Definition of Serviceable DPV Assembly

(c) For the purpose of this AD, a serviceable DPV assembly is an assembly that has either accumulated zero TSN, or has accumulated zero TIS after having passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, or has been successfully leak checked in accordance with paragraph 2.B. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions required by this AD must be done in accordance with Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 1, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6912 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD; Amendment 39–12687; AD 2002–06–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

DATES: This AD becomes effective on May 6, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 6, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What Is the Potential Impact if FAA Took No Action?

If not corrected, insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions could occur. This condition could result in reduced occupant safety at the rear bench seat location.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 2, 2002 (67 FR 29). The NPRM proposed to require you to replace the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector in the rear seat bench.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 5 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	Pilatus will provide free parts	$120	$600

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is ''within the next 30 calendar days after the effective date of this AD''.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–06–10 Pilatus Aircraft Ltd.: Amendment 39–12687; Docket No. 2001–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial Nos.
PC–12 and PC–12/45	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove the oxygen tubing and connector assembly, the oxygen tubing support bracket and grommet assembly, and the hose clamp (or FAA-approved equivalent parts) from the rear bench seat (part number 525.22.12.016). Replace these parts with parts of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	Within the next 30 days after May 6, 2002 (the effective date of this AD), unless already accomplished.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

Actions	Compliance	Procedures
(2) Do not install any of the components referenced in paragraph (d)(1) of this AD unless they are of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	As of May 6, 2002 (the effective date of this AD).	As specified in (Pilatus Aircraft Ltd., PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland, or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on May 6, 2002.

Issued in Kansas City, Missouri, on March 14, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6911 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–8071; 34–45601 35–27505; 39–2396; IC–25471; and IA–2021]

Approved Information Collections

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules concerning information collection requirements under the Paperwork Reduction Act to update the display of OMB control numbers associated with the Commission's collection of information. The display does not alter any Commission collection of information.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Michael E. Bartell, Associate Executive Director at U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, 202–942–8800.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is updating the information displayed at 17 CFR 200.800. This amendment sets forth control numbers assigned by the Office of Management and Budget to information collection requirements of the Commission as of the date of this release. The Commission finds that this amendment pertains to agency organization, procedure, or practice and is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring advance notice and opportunity for public comment prior to publication. In addition, the Commission finds good cause for immediate effectiveness upon publication in the **Federal Register**. Delayed effectiveness is unnecessary because this is a technical amendment and will not affect any rights or obligations of members of the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy.

Text of Amendment

For the reasons set forth in the Preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The title to Subpart N and Subpart N are revised to read as follows:

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose:* This subpart collects and displays the control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.* This subpart displays current OMB control numbers for those information collection requirements of the Commission that are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–X	PART 210	3235–0009

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–B	PART 228	3235–0417
Regulation S–K	PART 229	3235–0071
Rule 154	230.154	3235–0495
Rule 155	230.155	3235–0549
Rule 236	230.236	3235–0095
Rule 237	230.237	3235–0528
Regulation A	230.251 thru 230.263	3235–0286
Regulation C	230.400 thru 230.494	3235–0074
Rule 425	230.425	3235–0521
Rule 477	230.477	3235–0550
Rule 489	230.489	3235–0411
Rule 498	230.498	3235–0488
Regulation D	230.501 thru 230.506	3235–0076
Regulation E	230.601 thru 230.610a	3235–0232
Rule 604	230.604	3235–0232
Rule 605	230.605	3235–0232
Rule 609	230.609	3235–0233
Rule 701	230.701	3235–0522
Regulation S	230.901 thru 230.905	3235–0357
Regulation S–T	Part 232	3235–0424
Form SB–1	239.9	3235–0423
Form SB–2	239.10	3235–0418
Form S–1	239.11	3235–0065
Form S–2	239.12	3235–0072
Form S–3	239.13	3235–0073
Form N–2	239.14	3235–0026
Form N–1A	239.15A	3235–0307
Form S–6	239.16	3235–0184
Form S–8	239.16b	3235–0066
Form N–3	239.17a	3235–0316
Form N–4	239.17b	3235–0318
Form S–11	239.18	3235–0067
Form N–14	239.23	3235–0336
Form N–5	239.24	3235–0169
Form S–4	239.25	3235–0324
Form F–1	239.31	3235–0258
Form F–2	239.32	3235–0257
Form F–3	239.33	3235–0256
Form F–4	239.34	3235–0325
Form F–6	239.36	3235–0292
Form F–7	239.37	3235–0383
Form F–8	239.38	3235–0378
Form F–9	239.39	3235–0377
Form F–10	239.40	3235–0380
Form F–80	239.41	3235–0404
Form F–X	239.42	3235–0379
Form F–N	239.43	3235–0411
Form ET	239.62	3235–0329
Form ID	239.63	3235–0328
Form SE	239.64	3235–0327
Form TH	239.65	3235–0425
Form 1–A	239.90	3235–0286
Form 2–A	239.91	3235–0286
Form 144	239.144	3235–0101
Form 1–E	239.200	3235–0232
Form CB	239.800	3235–0518
Rule 6a–1	240.6a–1	3235–0017
Rule 6a–3	240.6a–3	3235–0021
Rule 6a–4	240.6a–4	3235–0554
Rule 6h–1	240.6h–1	3235–0555
Rule 8c–1	240.8c–1	3235–0514
Rule 9b–1	240.9b–1	3235–0480
Rule 10a–1	240.10a–1	3235–0475
Rule 10b–10	240.10b–10	3235–0444
Rule 10b–17	240.10b–17	3235–0476
Rule 10b–18	240.10b–18	3235–0474
Rule 10A–1	240.10A–1	3235–0468
Rule 11a1–1(T)	240.11a1–1(T)	3235–0478
Rule 11Aa3–2	240.11Aa3–2	3235–0500
Rule 11Ab2–1	240.11Ab2–1	3235–0043
Rule 11Ac1–3	240.11Ac1–3	3235–0435
Rule 11Ac1–4	240.11Ac1–4	3235–0462

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 11Ac1–5	240.11Ac1–5	3235–0542
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–7	240.11Ac1–7	3235–0543
Rule 12a–5	240.12a–5	3235–0079
Regulation 12B	240.12b–1 thru 240.12b–36	3235–0062
Rule 12d1–3	240.12d1–3	3235–0109
Rule 12d2–1	240.12d2–1	3235–0081
Rule 12d2–2	240.12d2–2	3235–0080
Rule 12f–1	240.12f–1	3235–0128
Rule 13a–16	240.13a–16	3235–0116
Regulation 13D/G	240.13d–1 thru 240.13d–7	3235–0145
Schedule 13D	240.13d–101	3235–0145
Schedule 13G	240.13d–102	3235–0145
Rule 13e–1	240.13e–1	3235–0305
Rule 13e–3	240.13e–3	3235–0007
Schedule 13E–3	240.13e–100	3235–0007
Schedule 13e–4F	240.13e–101	3235–0375
Regulation 14A	240.14a–1 thru 240.14a–12	3235–0059
Schedule 14A	240.14a–101	3235–0059
Regulation 14C	240.14c–1	3235–0057
Schedule 14C	240.14c–101	3235–0057
Regulation 14D	240.14d–1 thru 240.14d–9	3235–0102
Schedule TO	240.14d–100	3235–0515
Schedule 14D–1	240.14d–101	3235–0102
Schedule 14D–9	240.14d–101	3235–0102
Schedule 14D–1F	240.14d–102	3235–0376
Schedule 14D–9F	240.14d–103	3235–0382
Regulation 14E	240.14e–1 thru 240.14e–2	3235–0102
Rule 14f–1	240.14f–1	3235–0108
Rule 15a–4	240.15a–4	3235–0010
Rule 15a–6	240.15a–6	3235–0371
Rule 15b1–1	240.15b1–1	3235–0012
Rule 15b6–1(a)	240.15b6–1(a)	3235–0018
Rule 15c1–5	240.15c1–5	3235–0471
Rule 15c1–6	240.15c1–6	3235–0472
Rule 15c1–7	240.15c1–7	3235–0134
Rule 15c2–1	240.15c2–1	3235–0485
Rule 15c2–5	240.15c2–5	3235–0198
Rule 15c2–7	240.15c2–7	3235–0479
Rule 15c2–8	240.15c2–8	3235–0481
Rule 15c2–11	240.15c2–11	3235–0202
Rule 15c2–12	240.15c2–12	3235–0372
Rule 15c3–1	240.15c3–1	3235–0200
Rule 15c3–1(c)(13)	240.15c3–1(c)(13)	3235–0499
Appendix F to Rule 15c3–1	240.15c3–1f	3235–0496
Rule 15c3–3	240.15c3–3	3235–0078
Rule 15c3–4	240.15c3–4	3235–0497
Rule 15d–16	240.15d–16	3235–0116
Rule 15g–2	240.15g–2	3235–0434
Rule 15g–3	240.15g–3	3235–0392
Rule 15g–4	240.15g–4	3235–0393
Rule 15g–5	240.15g–5	3235–0394
Rule 15g–6	240.15g–6	3235–0395
Rule 15g–9	240.15g–9	3235–0385
Rule 15Aj–1	240.15Aj–1	3235–0044
Rule 15Ba2–1	240.15Ba2–1	3235–0083
Rule 15Ba2–5	240.15Ba2–5	3235–0088
Rule 15Bc3–1	240.15Bc3–1	3235–0087
Rule 17a–1	240.17a–1	3235–0208
Rule 17a–2	240.17a–2	3235–0201
Rule 17a–3	240.17a–3	3235–0033
Rule 17a–3(a)(16)	240.17a–3(a)(16)	3235–0508
Rule 17a–4	240.17a–4	3235–0279
Rule 17a–4(b)(10)	240.17a–4(b)(10)	3235–0506
Rule 17a–5	240.17a–5	3235–0123
Rule 17a–5(c)	240.17a–5(c)	3235–0199
Rule 17a–6	240.17a–6	3235–0489
Rule 17a–7	240.17a–7	3235–0131
Rule 17a–8	240.17a–8	3235–0092
Rule 17a–9T	240.17a–9T	3235–0524
Rule 17a–10	240.17a–10	3235–0122

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 17a–11	240.17a–11	3235–0085
Rule 17a–12	240.17a–12	3235–0498
Rule 17a–13	240.17a–13	3235–0035
Rule 17a–19	240.17a–19	3235–0133
Rule 17a–22	240.17a–22	3235–0196
Rule 17a–25	240.17a–25	3235–0540
Rule 17f–1(b)	240.17f–1(b)	3235–0032
Rule 17f–1(c)	240.17f–1(c)	3235–0037
Rule 17f–1(g)	240.17f–1(g)	3235–0290
Rule 17f–2(a)	240.17f–2(a)	3235–0034
Rule 17f–2(c)	240.17f–2(c)	3235–0029
Rule 17f–2(d)	240.17f–2(d)	3235–0028
Rule 17f–2(e)	240.17f–2(e)	3235–0031
Rule 17f–5	240.17f–5	3235–0269
Rule 17h–1T	240.17h–1T	3235–0410
Rule 17h–2T	240.17h–2T	3235–0410
Rule 17Ab2–1	240.17Ab2–1(a)	3235–0195
Rule 17Ac2–1	240.17Ac2–1	3235–0084
Rule 17Ad–2(c), (d), and (h)	240.17Ad–2(c), (d) and (h)	3235–0130
Rule 17Ad–3(b)	240.17Ad–3(b)	3235–0473
Rule 17Ad–4 (b) and (c)	240.17Ad–4(b) and (c)	3235–0341
Rule 17Ad–6	240.17Ad–6	3235–0291
Rule 17Ad–7	240.17Ad–7	3235–0291
Rule 17Ad–10	240.17Ad–10	3235–0273
Rule 17Ad–11	240.17Ad–11	3235–0274
Rule 17Ad–13	240.17Ad–13	3235–0275
Rule 17Ad–15	240.17Ad–15	3235–0409
Rule 17Ad–16	240.17Ad–16	3235–0413
Rule 17Ad–17	240.17Ad–17	3235–0469
Rule 19b–1	240.19b–1	3235–0354
Rule 19b–4	240.19b–4	3235–0045
Rule 19b–4(e)	240.19b–4(e)	3235–0504
Rule 19b–5	240.19b–5	3235–0507
Rule 19b–7	240.19b–7	3235–0553
Rule 19d–1	240.19d–1(b) thru 240.19d–1(i)	3235–0206
Rule 19d–2	240.19d–2	3235–0205
Rule 19d–3	240.19d–3	3235–0204
Rule 19h–1	240.19h–1(a), (c) thru (e), and (g)	3235–0259
Rule 24b–1	240.24b–1	3235–0194
Rule 101	242.101	3235–0464
Rule 102	242.102	3235–0467
Rule 103	242.103	3235–0466
Rule 104	242.104	3235–0465
Rule 301	242.301	3235–0509
Rule 302	242.302	3235–0510
Rule 303	242.303	3235–0505
Regulation FD	243.100 thru 243.103	3235–0536
Regulation S–P	Part 248	3235–0537
Form 1	249.1	3235–0017
Form 1–N	249.10	3235–0554
Form 25	249.25	3235–0080
Form 26	249.26	3235–0079
Form 3	249.103	3235–0104
Form 4	249.104	3235–0287
Form 5	249.105	3235–0362
Form 8–A	249.208a	3235–0056
Form 10	249.210	3235–0064
Form 10–SB	249.210b	3235–0419
Form 18	249.218	3235–0121
Form 20–F	249.220f	3235–0288
Form 40–F	249.240f	3235–0381
Form 6–K	249.306	3235–0116
Form 8–K	249.308	3235–0060
Form 10–Q	249.308a	3235–0070
Form 10–QSB	249.308b	3235–0416
Form 10–K	249.310	3235–0063
Form 10–KSB	249.310b	3235–0420
Form 11–K	249.311	3235–0082
Form 18–K	249.318	3235–0120
Form 12B–25	249.322	3235–0058
Form 15	249.323	3235–0167
Form 13F	249.325	3235–0006

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Form SE	249.444	3235–0327
Form ET	249.445	3235–0329
Form ID	249.446	3235–0328
Form DF	249.448	3235–0482
Form BD	249.501	3235–0012
Form BDW	249.501a	3235–0018
Form BD–N	249.501b	3235–0556
Form X–17A–5	249.617	3235–0123
Form X–17A–19	249.635	3235–0133
Form ATS	249.637	3235–0509
Form ATS–R	249.638	3235–0509
Form X–15AJ–1	249.802	3235–0044
Form X–15AJ–2	249.803	3235–0044
Form 19b–4	249.819	3235–0045
Form 19b–4(e)	249.820	3235–0504
Form Pilot	249.821	3235–0507
Form SIP	249.1001	3235–0043
Form MSD	249.1100	3235–0083
Form MSDW	249.1110	3235–0087
Form X–17F–1A	249.1200	3235–0037
Form TA–1	249b.100	3235–0084
Form TA–W	249b.101	3235–0151
Form TA–2	249b.102	3235–0337
Form CA–1	249b.200	3235–0195
Rule 1(a)	250.1(a)	3235–0170
Rule 1(b)	250.1(b)	3235–0170
Rule 1(c)	250.1(c)	3235–0164
Rule 2	250.2	3235–0161
Rule 3	250.3	3235–0160
Rule 7	250.7	3235–0165
Rule 7(d)	250.7(d)	3235–0165
Rule 20(b)	250.20(b)	3235–0125
Rule 20(c)	250.20(c)	3235–0125
Rule 20(d)	250.20(d)	3235–0163
Rule 23	250.23	3235–0125
Rule 24	250.24	3235–0126
Rule 26	250.26	3235–0183
Rule 29	250.29	3235–0149
Rule 44	250.44	3235–0147
Rule 45	250.45	3235–0154
Rule 47(b)	250.47(b)	3235–0163
Rule 52	250.52	3235–0369
Form 53	250.53	3235–0426
Rule 54	250.54	3235–0427
Rule 57(a)	250.57(a)	3235–0428
Rule 57(b)	250.57(b)	3235–0429
Rule 58	250.58	3235–0457
Rule 62	250.62	3235–0152
Rule 71(a)	250.71(a)	3235–0173
Rule 72	250.72	3235–0149
Rule 83	250.83	3235–0181
Rule 87	250.87	3235–0552
Rule 88	250.88	3235–0182
Rule 93	250.93	3235–0153
Rule 94	250.94	3235–0153
Rule 95	250.95	3235–0162
Rule 100(a)	250.100(a)	3235–0125
Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies, Public Utility Holding Company Act of 1935.	Part 256	3235–0153
Preservation and Destruction of Records of Registered Public Utility Holding Companies and of Mutual and Subsidiary Service Companies.	Part 257	3235–0306
Form U5A	259.5a	3235–0170
Form U5B	259.5b	3235–0170
Form U5S	259.5s	3235–0164
Form U–1	259.101	3235–0125
Form U–13–1	259.113	3235–0182
Form U–6B–2	259.206	3235–0163
Form U–57	259.207	3235–0428
Form U–9C–3	259.208	3235–0457
Form U–12(I)–A	259.212a	3235–0173

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Form U–12(I)–B	259.212b	3235–0173
Form U–13E–1	259.213	3235–0162
Form U–R–1	259.221	3235–0152
Form U–13–60	259.313	3235–0153
Form U–3A–2	259.402	3235–0161
Form U–3A3–1	259.403	3235–0160
Form U–7D	259.404	3235–0165
Form U–33–S	259.405	3235–0429
Form ET	259.601	3235–0329
Form ID	259.602	3235–0328
Form SE	259.603	3235–0327
Rule 7a–15 thru 7a–37	260.7a–15 thru 260.7a–37	3235–0132
Form T–1	269.1	3235–0110
Form T–2	269.2	3235–0111
Form T–3	269.3	3235–0105
Form T–4	269.4	3235–0107
Form ET	269.6	3235–0329
Form ID	269.7	3235–0328
Form SE	269.8	3235–0327
Form T–6	269.9	3235–0391
Rule 0–1	270.0–1	3235–0531
Rule 2a–7	270.2a–7	3235–0268
Rule 2a19–1	270.2a19–1	3235–0332
Rule 3a–4	270.3a–4	3235–0459
Rule 6c–7	270.6c–7	3235–0276
Rule 6e–2	270.6e–2	3235–0177
Rule 7d–1	270.7d–1	3235–0311
Rule 7d–2	270.7d–2	3235–0527
Section 8(b) of the Investment Company Act of 1940	270.8b–1 thru 270.8b–32	3235–0176
Rule 10f–3	270.10f–3	3235–0226
Rule 11a–2	270.11a–2	3235–0272
Rule 11a–3	270.11a–3	3235–0358
Rule 12b–1	270–12b–1	3235–0212
Rule 17a–7	270.17a–7	3235–0214
Rule 17a–8	270.17a–8	3235–0235
Rule 17e–1	270.17e–1	3235–0217
Rule 17f–1	270.17f–1	3235–0222
Rule 17f–2	270.17f–2	3235–0223
Rule 17f–4	270.17f–4	3235–0225
Rule 17f–6	270.17f–6	3235–0447
Rule 17f–7	270–17f–7	3235–0529
Rule 17g–1(g)	270.17g–1(g)	3235–0213
Rule 17j–1	270.17j–1	3235–0224
Rule 18f–1	270.18f–1	3235–0211
Rule 18f–3	270.18f–3	3235–0441
Rule 19a–1	270.19a–1	3235–0216
Rule 20a–1	270–20a–1	3235–0158
Rule 22d–1	270–22d–1	3235–0310
Rule 23c–1	270.23c–1	3235–0260
Rule 23c–3	270.23c–3	3235–0422
Rule 27e–1	270.27e–1	3235–0545
Rule 30b2–1	270.30b2–1	3235–0220
Rule 30d–2	270.30d–2	3235–0494
Rule 30e–1	270.30e–1	3235–0025
Rule 31a–1	270.31a–1	3235–0178
Rule 31a–2	270.31a–2	3235–0179
Rule 32a–4	270.32a–4	3235–0530
Rule 34b–1	270.34b–1	3235–0346
Rule 35d–1	270–35d–1	3235–0548
Form N–5	274.5	3235–0169
Form N–8A	274.10	3235–0175
Form N–2	274.11a–1	3235–0026
Form N–3	274.11b	3235–0316
Form N–4	274.11c	3235–0318
Form N–8B–2	274.12	3235–0186
Form N–6F	274.15	3235–0238
Form 24F–2	274.24	3235–0456
Form N–18F–1	274.51	3235–0211
Form N–54A	274.53	3235–0237
Form N–54C	274.54	3235–0236
Form N–SAR	274.101	3235–0330
Form N–27E–1	274.127e–1	3235–0545

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Form N–27F–1	274.127f–1	3235–0546
Form N–17D–1	274.200	3235–0229
Form N–23C–1	274.201	3235–0230
Form N–8F	274.218	3235–0157
Form N–17F–1	274.219	3235–0359
Form N–17F–2	274.220	3235–0360
Form N–23c–3	274.221	3235–0422
Form ET	274.401	3235–0329
Form ID	274.402	3235–0328
Form SE	274.403	3235–0327
Rule 0–2	275.0–2	3235–0240
Rule 203–3	275.203–3	3235–0538
Rule 204–2	275.204–2	3235–0278
Rule 204–3	275.204–3	3235–0047
Rule 206(3)–2	275.206(3)–2	3235–0243
Rule 206(4)–2	275.206(4)–2	3235–0241
Rule 206(4)–3	275.206(4)–3	3235–0242
Rule 206(4)–4	275.206(4)–4	3235–0345
Form ADV	279.1	3235–0049
Schedule I to Form ADV	279.1	3235–0490
Form ADV–W	279.2	3235–0313
Form ADV–H	379.3	3235–0538
Form 4–R	279.4	3235–0240
Form 5–R	279.5	3235–0240
Form 6–R	279.6	3235–0240
Form 7–R	279.7	3235–0240
Form ADV–E	279.8	3235–0361

Dated: March 20, 2002.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7287 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–035]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation from the regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the bridge to remain in the closed position for vessel traffic to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from April 5, 2002 through April 19, 2002.

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

SUPPLEMENTARY INFORMATION: The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs at the bridge, replacement of the main floor beam, at the bridge.

This deviation to the operating regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the Brightman Street Bridge to remain in the closed position for vessel traffic. There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

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

[FR Doc. 02–7357 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–030]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the NJTRO HX Railroad Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey. This deviation from the regulations, effective from April 6, 2002 through April 28, 2002, allows the bridge to remain in the closed position on four weekends to facilitate scheduled maintenance repairs at the bridge.

DATES: This deviation is effective from April 6, 2002 through April 28, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.723.

The owner of the bridge, the New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations that govern their NJTRO HX

Bridge, at mile 7.7, across the Hackensack River in Secaucus, New Jersey, to facilitate necessary structural repairs at the bridge.

This deviation to the operating regulations allows the NJTRO HX Bridge to remain in the closed position every weekend in April, from 6 a.m. on Saturday through 6 p.m. on Sunday. The effective dates are as follows: April 6–7, 13–14, 20–21, 27–28, 2002. The Coast Guard coordinated this closure with the mariners that normally use this waterway to help select the best effective dates this temporary deviation will be in effect.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

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

[FR Doc. 02–7358 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–004]

RIN 2115–AA97

Security Zone; Operation Native Atlas 2002, Waters Adjacent to Camp Pendleton, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to Camp Pendleton, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

In addition, the U.S. Navy will be installing 1260 feet of elevated causeway pier (ELCAS) at Red Beach, and conducting Offshore Petroleum Discharge System (OPDS) operations offshore from Red Beach. Both operations present a significant hazard to vessel's transiting within the zone.

DATES: This rule is effective from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PDT) on April 15, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 02–004, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard recently issued a similar temporary final rule under docket COTP San Diego 02–001, and published that rule in the **Federal Register** on February 22, 2002 (67 FR 8197). Also on February 22, 2002, because the exercise was postponed, the Captain of the Port ceased enforcement of that security zone and announced that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

This rulemaking action was taken at the request of the United States Navy and is considered necessary to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. This temporary security zone is necessary for protection of the public from the hazards of upcoming Naval operations in support of Operation Native Atlas 2002 in the area and for the protection of the operations from compromise and interference.

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Due to the complex planning, national security reasons, and the coordination involved with Naval scheduling, final details for the Operation Native Atlas 2002 were not provided to the Coast Guard in time to draft and publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Background and Purpose

United States Navy officials have requested that the Captain of the Port, San Diego, California establish a temporary security zone in the area of Camp Pendleton, California. This request was made to improve security of Naval facilities and operations at this location and to protect the public from hazardous operations. Several hazardous or classified Naval operations, including activities related to Operation Native Atlas 2002 will be conducted near this location that are vital to national security and require protection of the public or protection of the operation from compromise and interference. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States.

This security zone is necessary to provide for the safety and security of the United States of America. This security zone, prohibiting all vessel traffic from entering, transiting or anchoring within the areas defined by the security zone, is necessary for the security and protection of national assets. U.S. Navy personnel and U.S. Coast Guard vessels will enforce this zone.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

This security zone is established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

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

Due to national security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Camp Pendleton, California. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lt Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule, which establishes a security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection

or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–036 to read as follows:

§ 165.T11–036 Security Zone: Waters Adjacent to Camp Pendleton, California

(a) *Location.* The following area is a security zone: All waters and shoreline areas within the following boundaries: A point on the shore at 33°–15′30″ N, 117°–26′14″– W (Point A); proceeding westward to 33°–15′24″ N, 117°–30′45″ W (Point B); then north westward to 33°–18′30″ N, 117°32′55″ W (Point C); then eastward to the shore at 33°–18′42″ N, 117°–29′00″ W (Point D); thence along the shoreline to the point of beginning.

(b) *Effective dates.* This security zone will be in effect from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PST) on April 15, 2002. If the need for this security zone ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary regulation, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary regulation. Mariners requesting permission to transit through the security zones must request authorization to do so from the Captain of the Port, who may be contacted at (619) 683–6495, or U.S. Navy Force Security Officer (FSO), who may be reached during normal working hours at (619) 437–9828. After normal working hours the FSO can be reached at (619) 437–9480.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: March 15, 2002.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–7355 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG 1999–6094]

RIN 2115–AF87

Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard removes a suspended provision, which would have required the public to report collisions of recreational vessels involving two or more vessels, regardless of the amount of damage to property. This removal streamlines reporting criteria and reduces paperwork burdens on the public, the States, and the Coast Guard, for accidents causing minor or cosmetic damage. The remaining provision, which requires the public to report damage to vessels and other property when it totals $2,000 or more or there is a complete loss of any vessel, is in effect as published.

DATES: Effective March 27, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG 1999–6094 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Bruce Schmidt, Project Manager, Office of Boating Safety, Program Management Division, Coast Guard, by e-mail at *bschmidt@comdt.uscg.mil* or by telephone at 202–267–0955.

If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility, at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The National Association of State Boating Law Administrators (NASBLA) is a professional association whose members include officials of States, commonwealths, and provinces. These officials are responsible for administering and enforcing the boating laws of their jurisdictions. The Boating Accident Investigation, Reporting, and Analysis Committee (BAIRAC) is a subcommittee of NASBLA and is responsible for the reporting and analysis of accidents.

The Boating Law Administrators (BLAs) who serve on BAIRAC are experts in enforcement, education for boating safety, and investigation of boating accidents. Through their experience with and knowledge of various types of boat damage and subsequent repair costs, they strongly encouraged the Coast Guard to raise the threshold of property damage for reports of accidents involving recreational vessels to a level that reflects current prices of boats and costs of repair.

BAIRAC asked the Coast Guard to initiate a rulemaking that would change the threshold for reports of accidents involving only property damage from $500 to $2,000 and would amend the reportable conditions to include all accidents involving collisions of multiple vessels. While the Coast Guard concurred that a threshold of $2,000 for those accidents involving only property damage would enable States' accident investigators to focus on reports of safety-related damage and eliminate most of the reports of cosmetic damage, we needed to study the feasibility of requiring the reports of all multi-vessel accidents.

Data within the Boating Accident Report Database (BARD) for 1998 show that 1,718 reported multi-boat collisions involved only property damage. Of those 1,718, 1,002 involved property damage below the proposed threshold of $2,000. Taking a closer look at the data, we discovered that nearly 90% of those 1,002 involve property damage at or below a threshold of $1,500. We considered most of these more cosmetic than safety-related. So, recognizing the

need to reduce the number of reports for minor or cosmetic damage, the need to reduce the administrative burden on the public and the States of reports for such damage, and the need for States' accident investigators to focus on safety-related damage, we did not mandate reports of all multi-boat collisions at that time.

After we published our Notice of Proposed Rulemaking (NPRM), we received five comments that urged us to include a provision that required reports of all multi-vessel collisions because most of these accidents are caused by boat operators who violate navigation rules. As first written, our Final Rule would have raised the reporting threshold to $2000, yet also have required that all multi-vessel accidents must be reported; however, shortly after the publication date, though before the effective date of the Rule, we received a comment that recommended that we suspend the provision to require reports of multi-vessel collisions. The commenter indicated that his State could not comply with the Rule because his State did not require such reports, nor could the legislature in his State meet before the effective date of the Rule. (All States currently require owners or operators to report accidents costing $500 or more; however, few States require them to report all accidents. To change this, each State's legislature would have to vote to require reports of all multi-vessel accidents.) While the portion of the Rule that raised the threshold went into effect as planned, we suspended the multi-vessel provision and requested comments. On the basis of the feedback we received from that Notice of Suspension, we are removing the suspended provision.

This Rule will raise the threshold of property damage for reports of accidents involving recreational vessels (including multi-vessel accidents) from the current level of $500 to $2000. This higher threshold will reduce the numbers of reports of accidents involving minor or cosmetic damage and reduce the burden of paperwork on the boating public, the States, and the Coast Guard itself.

Regulatory History

We published an NPRM [65 FR 38229 (June 20, 2000)]. In it, we proposed to raise the threshold of reporting accidents from $500 to $2000. To it, we received seventeen comments. Twelve of them supported raising the threshold of property damage to $2,000; five of those twelve also supported requiring the reporting of all accidents involving collisions of two or more vessels, regardless of the amount of property damage. The five not among the twelve opposed raising the threshold of property damage at all.

We decided to move forward with our plan to raise the reporting threshold to $2000. On the basis of comments submitted by NASBLA and BAIRAC, we also planned on requiring reports of all accidents involving collisions of two or more vessels, regardless of the amount of property damage, because boat operators who violate a navigation rule cause most of these accidents. We published a Final Rule to codify these plans [66 FR 21671 (May 1, 2001)].

Shortly after publication of the Final Rule, we received a comment that indicated that many States would be unable to comply with the requirement to report all multi-vessel accidents, because few States have such a requirement in their books, few States have statutory authority to require such reports, and many States' legislative calendars preclude compliance by the published effective date, July 2, 2001.

In response to this comment, we suspended the provision that required the reporting of all multi-vessel accidents, and we requested further comments [66 FR 33844 (June 26, 2001)]. We reopened the comment period to accommodate a request by NASBLA, so they could meet as a body and forward their official comment to us [66 FR 53754 (October 24, 2001)]. On the basis of the comments we received, we are removing the provision we suspended, which would have required the reporting of all multi-vessel accidents; and, though it is already in effect, we are finalizing the remainder of the rule: report damage to vessels and other property that totals $2,000 or more and report the complete loss of any vessel.

Discussion of Comments and Changes

We received a total of nine comments to our Partial Suspension of Rule; Request for Comments. One comment was submitted to this docket in error; another requested that we reopen the comment period; therefore, we analyzed a total of seven comments.

While all commenters were concerned with either safety, reporting efficiency, or both, their approaches to achieve these goals varied. Three commenters indicated that they do not favor removing 33 CFR 173.55(a)(3)(ii), that is, they prefer requiring reports on all multi-vessel accidents, regardless of cost. One of these three indicated willingness to compromise by keeping the reporting threshold for multi-vessel accidents at $500.

Two of the three comments in favor of requiring reports of all multi-vessel accidents, regardless of the amount of damage to property, came from State Boating Law Administrators (BLAs). One indicated that suspending the effective date for a year would be acceptable in giving the States time to gain statutory authority to require reports of multi-vessel accidents. The second was concerned that many multi-vessel accidents involving smaller boats would go unreported. The third thought that, without reports of these accidents, it would be difficult to determine whether a safety problem exists. After thoughtfully considering the three comments, the Coast Guard decided that the prospect of all States' getting statutory authority to uniformly require reports of multi-vessel accidents is not realistic either from a logistical or from a legislative perspective.

Two BLA commenters indicated that they do favor removing the provision, because their States would not have the statutory authority to require reports of all multi-vessel accidents. These two indicated that changing their States' laws to eliminate the value of property damage for multi-vessel accidents would be difficult and time-consuming. They recommend keeping the reporting threshold for multi-vessel accidents at $500 since all States maintain at least a $500 reporting threshold and, therefore, legislation would be unnecessary for reporting multi-vessel accidents at that level. After thoughtfully considering these two comments, the Coast Guard decided that a uniform threshold of $2,000 for reports of property damage that includes multi-vessel accidents would be better understood by those individuals required to file accident reports.

Another commenter favored removing the provision out of concern for our workload.

We agree that the requirement to report multi-vessel accidents would create an undue burden for those required to process all reports of multi-vessel accidents in each State.

NASBLA wrote to the docket and requested that we reopen the comment period so they could discuss this rulemaking at their next scheduled meeting. We did to accommodate their request. NASBLA (whose subcommittee, BAIRAC, had recommended that the Coast Guard raise the reporting threshold in the first place) indicated that a majority of their members voted to recommend removing the provision and to uniformly report all accidents with $2,000 or more in property damage including two-vessel collisions. On the basis of the comments we received, especially that of NASBLA, which represents boating authorities of all 50 States and the U.S. Territories, we are

removing the provision that requires all multi-vessel collisions to be reported. Therefore, as previously published in the Final Rule, regardless of whether multiple vessels are involved, an accident report is required only when damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel.

While the threshold of $2,000 for reports of accidents with only property damage now becomes the minimum set by Federal rule, States remain free to impose stricter requirements. Thus, a State could require reports of accidents involving collisions of multiple vessels, even if they resulted only in property damage below the threshold of $2,000.

Also note that, if, after an accident, a vessel valued at less than $2000 is a complete loss, that too must be reported. The Coast Guard will continue to collect, analyze, and report data so that, together with the States, industry, and public, we can enhance the safety of recreational boating.

List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

Subpart C—Casualty and Accident Reporting

1. The citation of authority for part 173 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

§ 173.55 [Amended]

2. Revise § 173.55(a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel;

* * * * *

Dated: March 20, 2002.

Kenneth T. Venuto,

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

[FR Doc. 02–7235 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 2115–AG04

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

AGENCY: Coast Guard, DOT.

ACTION: Final rule; notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing the Final Rule on the wearing of PFDs by certain children aboard recreational vessels. It needs to reconsider the extent, if any, to which its rule should supersede States' rules that are compatible in most respects, but that are divergent in some. It hopes to save children's lives on the water and yet accord our system of federalism ''full faith and credit.''

DATES: This final rule amending 33 CFR part 175 published on February 27, 2002 [67 FR 8881] is withdrawn as of March 27, 2002.

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

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

SUPPLEMENTARY INFORMATION:

Regulatory History

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

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

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

We published a final rule in the **Federal Register** on February 27, 2002 [67 FR 8881] establishing two Federal requirements. The first was for children under 13 aboard recreational vessels to wear PFDs, while the children are on deck and their vessels are underway. The second adopted any age requirement enacted or adopted by a State age requirement as the Federal age requirement, within the States. The rule did not formally address the various limits such as those related to length of vessel, by which some States qualified the applicability of their age requirements. We did not consider these differences between Federal and State requirements, according to vessel length, to be a problem. The rule would have been effective on March 29, 2002.

Withdrawal

After the rule was published, a State's Boating Law Administrator alerted us to potential enforcement problems resulting from these differences. At the same time, as we prepared guidance for our boarding officers on the fine points of enforcement, we observed the same potential enforcement problems with the differences. We decided that we needed to withdraw the Final Rule as it stood and fix it.

Therefore, we are withdrawing the final rule [67 FR 8881] and are revising some of its provisions. We are determining how to resolve the differences between Federal and State requirements and will notify the public and publish our decision in the **Federal Register**.

Again, we need to reconsider the extent, if any, to which our rule should supersede States' rules that are compatible in most respects but that are divergent in some, such as vessel length. We will do this in candor because we are dedicated to maintaining the public trust.

Meanwhile, we ask parents to ensure that children under 13 wear Coast

Guard approved lifejackets while the children are on deck and their vessels are under way. Children's safety is the ultimate objective and the delay of the rule should not stand in the way of sound judgment.

Dated: March 20 2002.

Kenneth T. Venuto,

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

[FR Doc. 02–7236 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL–7158–2]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule.

SUMMARY: EPA is updating the Outer Continental Shelf (''OCS'') Air Regulations as they apply to OCS sources off the coast of Alaska. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of incorporating the State of Alaska requirements applicable to OCS sources in effect as of July 2, 2000, is to regulate emissions from OCS sources consistent with the requirements onshore.

EFFECTIVE DATE: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle WA 98101, Telephone: (206) 553–4150.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2001, the EPA published a direct final rule (66 FR 12982), and an accompanying proposed rule (66 FR 12986) updating the OCS Air Regulations as they apply to OCS sources off the coast of Alaska. In the direct final rule, EPA indicated that if adverse comment was received, EPA would publish a withdrawal of the direct final rule in the **Federal Register**. On March 9, 2001, EPA received adverse comments from the International Association of Drilling Contractors (Association). Accordingly on October 23, 2001, EPA removed the amendment made by that final rule due to the adverse public comments received and reinstated the previous regulatory text (66 FR 53533). In this action, EPA is summarizing and responding to the comments while also finalizing the amendments as previously proposed on March 1, 2001.

Response to Comments

On March 1, 2001, the EPA proposed to incorporate the State of Alaska requirements that are applicable to OCS sources, July 2, 2000, into 40 CFR part 55. The State of Alaska requirements applicable to OCS sources included the State of Alaska's revised marine vessel visible emission standards, 18 AAC 50.070, effective June 21, 1998. The standards limit visible emissions from marine vessels within three miles of the Alaska coastline. Note, the State of Alaska's seaward boundary extends out three miles from its coastline. Alaska's jurisdiction does not extend beyond this three mile limit. When EPA proposed to incorporate into 40 CFR part 55 the marine vessel emission standards in the State of Alaska requirements applicable to OCS sources, EPA intended for the standards to apply outside the seaward boundary of the State of Alaska despite the fact that 18 AAC 50.070, on its face, applies only to marine vessel visible emissions within Alaska's seaward boundary. 18 AAC 50.070, provides in part that ''visible emissions, excluding condensed water vapor, may not reduce visibility through the exhaust effluent of a marine vessel by more than 20 percent. * * *''

EPA received adverse comments from the Association regarding the applicability of the marine vessel visible emission standards, 18 AAC 50.070, to activity on the OCS. The Association believes that 18 AAC 50.070 should be excluded from 40 CFR part 55 because the emission standards, as written, apply only to vessels within three miles of the Alaska coastline. The Association also commented that the 18 AAC 50.070 should not be incorporated into 40 CFR part 55 for the same reasons that 18 AAC 50.300(g) and (h)(11) are excluded. In response to the Association's comments, EPA is providing the rationale to support the incorporation of 18 AAC 50.070 into 40 CFR part 55.

Pursuant to section 328(a)(1) of the Clean Air Act, EPA shall establish requirements to control air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act. Such requirements shall be the same as would be applicable if the source were located in the COA. The marine vessel visible emission standards are rationally related to the attainment and maintenance of Federal and State ambient air quality standards for particulate matter and part C of title I of the Act. Visible emissions from marine vessels consist, in part, of particulate matter. Limiting these visible emissions also limits particulate matter emissions, thus assisting in the protection of the particulate matter ambient air quality standards and the prevention of significant air quality deterioration. The marine vessel visible emission standards are not designed expressly to prevent exploration and development of the OCS as evidenced by the fact that the same standards apply to exploration and development projects in Alaskan waters. It is appropriate that the marine vessel visible emission standards are applied to OCS sources because marine vessels are capable of generating visible emissions and the vessels operate on the OCS; thus, the vessels should be subject to requirements that are ''the same as'' the requirements that apply within three miles of the Alaska coastline. In response to the second part of the Association's comments, the visible emission requirements in 18 AAC 50.070 are very different from the requirements of 18 AAC 50.300(g) and (h)(11). By their terms, 18 AAC 50.300(g) and (h)(11) apply only to Anchorage. Thus, contrary to the Association's comment, the rationale for excluding 18 AAC 50.300(g) and (h)(11) is not applicable to 18 AAC 50.070 and provides no basis for excluding 18 AAC 50.070 from 40 CFR part 55. Lastly, the marine vessel emission standards are not arbitrary or capricious and EPA's incorporation of these standards into 40 CFR part 55 is not arbitrary or capricious as evidenced by the reasoning provided above.

EPA has evaluated the COA requirements to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

EPA Action

In this document, EPA takes final action under section 328(a)(1) of the Act, 42 U.S.C. 7627, to incorporate the State of Alaska requirements applicable to OCS sources, July 2, 2000, into 40 CFR part 55. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act),'' signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective April 26, 2002.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 May 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 6, 2002.

L. John Iani,

Regional Administrator, Region 10.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, July 2, 2000.

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading ''Alaska'' to read as follows:

APPENDIX A TO 40 CFR PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

* * * * *

Alaska

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, July 2, 2000. Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter. (effective 1/18/1997)
18 AAC 50.010. Ambient Air Quality Standards. (effective 6/21/1998)
18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions. (effective 1/18/1997)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations. (effective 6/21/1998)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
18 AAC 50.025. Visibility and Other Special Protection Areas. (effective 1/18/1997)
(a) [untitled]
18 AAC 50.030. State Air Quality Control Plan. (effective 9/04/1998)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference. (effective 7/02/2000)
18 AAC 50.045. Prohibitions. (effective 1/18/1997)
18 AAC 50.050. Incinerator Emission Standards. (effective 1/18/1997)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-burning Equipment. (effective 11/04/1999)
18 AAC 50.065. Open Burning. (effective 1/18/1997)
(a) General Requirements.
(b) Black Smoke Prohibited.
(c) Toxic and Acid Gases and Particulate Matter Prohibited.
(d) Adverse Effects Prohibited.
(e) Air Quality Advisory.
(i) Firefighter Training: Fuel Burning.
(j) Public Notice.
(k) Complaints.
18 AAC 50.070. Marine Vessel Visible Emission Standards. (effective 6/21/1998)
18 AAC 50.080. Ice Fog Standards. (effective 1/18/1997)
18 AAC 50.100. Nonroad engines. (effective 1/18/1997)
18 AAC 50.110. Air Pollution Prohibited. (effective 5/26/1972)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation. (effective 1/18/1997)
18 AAC 50.205. Certification. (effective 1/18/1997)
18 AAC 50.210. Potential to Emit. (effective 1/18/1997)
18 AAC 50.215. Ambient Air Quality Analysis Methods. (effective 6/21/1998)
18 AAC 50.220. Enforceable Test Methods. (effective 1/18/1997)
18 AAC 50.225. Owner-requested Limits. (effective 6/21/1998)
18 AAC 50.230. Preapproved Limits. (effective 6/21/1998)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions. (effective 6/14/1998)
18 AAC 50.240. Excess Emissions. (effective 1/18/1997)

Article 3. Permit Procedures and Requirements

18 AAC 50.300. Construction Permits: Classifications. (effective 6/21/1998)
(a) [untitled]
(b) Ambient Air Quality Facilities.
(c) Prevention of Significant Deterioration Major Facilities.
(d) Nonattainment Major Facilities.
(e) Major Facility Near a Nonattainment Area.
(f) Hazardous Air Contaminant Major Facilities.
(h) Modifications. (paragraphs 1 through 10)
18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator. (effective 1/18/97)

18 AAC 50.310. Construction Permits: Application. (effective 1/18/1997)
(a) Application Required.
(b) Operating Permit Coordination.
(c) General Information.
(d) Prevention of Significant Deterioration Information. Table 6. Significant Concentrations
(e) Excluded Ambient Air Monitoring.
(f) Nonattainment Information.
(g) Demonstration Required Near A Nonattainment Area.
(h) Hazardous Air Contaminant Information.
(j) Nonattainment Air Contaminant Reductions.
(k) Revising Permit Terms.
(l) Requested Limits.
(m) Stack Injection.
(n) Ambient Air Quality Information.
18 AAC 50.320. Construction Permits: Content and Duration. (effective 1/18/1997)
18 AAC 50.325. Operating Permits: Classifications. (effective 6/21/1998)
18 AAC 50.330. Operating Permits: Exemptions. (effective 1/18/1997)
18 AAC 50.335. Operating Permits: Application. (effective 6/21/1998)
(a) Application Required.
(b) Identification.
(c) General Emission Information.
(d) Fees.
(e) Regulated Source Information.
(f) Facility-wide Information: Ambient Air Quality.
(g) Facility-wide Information: Owner Requested Limits.
(h) Facility-wide Information: Emissions Trading.
(i) Compliance Information.
(j) Proposed Terms and Conditions.
(k) Compliance Certifications.
(l) Permit Shield.
(m) Supporting Documentation.
(n) Additional Information.
(o) Certification of Accuracy and Completeness.
(p) Renewals.
(q) Insignificant Sources.
(r) Insignificant Sources: Emission Rate Basis.
(s) Insignificant Sources: Category Basis.
(t) Insignificance Sources: Size or Production Rate Basis.
(u) Insignificant Sources: Case-by-Case Basis.
(v) Administratively Insignificant Sources.
18 AAC 50.340. Operating Permits: Review and Issuance. (effective 1/18/1997)
(a) Review of Completeness.
(b) Evaluation of Complete Applications.
(c) Expiration of Application Shield.
18 AAC 50.341. Operating Permits: Reopenings. (paragraphs a, b, c, f, and g)(effective 6/14/1998)
18 AAC 50.345. Operating Permits: Standard Conditions. (effective 6/21/1998)
18 AAC 50.350. Operating Permits: Content. (effective 6/21/1998)
(a) Purpose of Section
(b) Standard Requirements.
(c) Fee Information.
(d) Source-Specific Permit Requirements.
(e) Facility-Wide Permit Requirements.
(f) Other Requirements.
(g) Monitoring Requirements.
(h) Records.
(i) Reporting Requirements.
(j) Compliance Certification.
(k) Compliance Plan and Schedule.
(l) Permit Shield.
(m) Insignificant Sources.
18 AAC 50.355. Changes to a Permitted Facility. (effective 1/18/1997)
18 AAC 50.360. Facility Changes that Violate a Permit Condition. (effective 1/18/1997)
18 AAC 50.365. Facility Changes that do not Violate a Permit Condition. (effective 6/14/1998)
18 AAC 50.370. Administrative Revisions. (effective 6/14/1998)
18 AAC 50.375. Minor and Significant Permit Revisions. (effective 6/21/1998)
18 AAC 50.380. General Operating Permits. (effective 6/14/1998)
18 AAC 50.385. Permit-by-rule for Certain Small Storage Tanks. (effective 6/21/1998)

Article 5. User Fees

18 AAC 50.400. Permit Administration Fees. (effective 6/21/1998)
18 AAC 50.410. Emission Fees. (effective 1/18/1997)
18 AAC 50.420. Billing Procedures. (effective 1/18/1997)

Article 9. General Provisions

18 AAC 50.910. Establishing Level of Actual Emissions. (effective 1/18/1997)
18 AAC 50.990. Definitions. (effective 1/01/2000)

* * * * *

[FR Doc. 02–6612 Filed 3–26–02; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301225; FRL–6829–3]

RIN 2070–AB78

Acetamiprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues ofacetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on citrus dried pulp, citrus fruit group, cotton gin byproducts, cotton undelinted seed, grape, fruiting vegetable group, leafy brassica vegetable group, leafy vegetable (except brassica) group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; poultry eggs,fat, liver, and meat. Aventis CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 27, 2002. Objections and requests for hearings, identified by docket control number OPP–301225, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may besubmitted 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–301225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Akiva Abramovitch, Registration Division (7505C), Office of Pesticide Programs, EnvironmentalProtection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8328; e-mail address: abramovitch.akiva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301225. 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 May 30, 2001 (66 FR 29213)(FRL–6782–9), 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 0F06082) by Aventis CropScience (formerly Rhone-Poulenc Ag Company), P.O. Box 12014, #2 T.W. Alexander Drive, Research Triangle Park, NC 207709. This notice included a summary of the petition prepared by Aventis CropScience, 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 tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on brassica (cole crops) at 1.2 parts per million (ppm), canola seed and mustard seed at 0.01 ppm, citrus at 0.5 ppm, cottonseed at 0.06 ppm, fruiting vegetables at 0.2 ppm, grapes at 0.2 ppm, leafy vegetables at 3.0 ppm, and pome fruits at 0.70 ppm. The Agency will not address the canola seed and mustard seed tolerances at this time.

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 tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]- N2-cyano-N1-methylacetamidine in or on citrus fruit group at 0.50 ppm, citrus dried pulp and leafy brassica vegetable group at 1.20 ppm each, cotton gin byproducts at 20.0 ppm, cotton undelinted seed at 0.60 ppm, leafy vegetable group (except brassica) at 3.0 ppm, fruiting vegetable group and grape at 0.20 ppm each, pome fruit group at 1.0 ppm, and tomato paste at 0.40 ppm; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat and fat of cattle, hog, horse, goat, and sheep at 0.10 ppm each; meat byproducts of cattle, hog, horse, goat, and sheep at 0.20 ppm each; milk at 0.10 ppm; poultry eggs, meat and fat at 0.010 ppm each; and poultry liver at 0.050 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 acetamiprid 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.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Rat	NOAEL: 12.4/14.6 mg/kg/day - Male/Female (M/F) LOAEL: 50.8/56.0 mg/kg/day (M/F) based on decreased Body Weight (BW), BW gain and food consumption.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Mouse	NOAEL: 106.1/129.4 mg/kg/day (M/F) LOAEL: 211.1/249.1 mg/kg/day (M/F) based on reduced BW and BW gain, decreased glucose and cholesterol levels, reduced absolute organ weights.
870.3150	90–Day oral toxicity in nonrodents	NOAEL: 13/14 mg/kg/day (M/F) LOAEL: 32 mg/kg/day based on reduced BW gain in both sexes.
870.3200	21–Day dermal toxicity - rabbit	NOAEL: 1,000 mg/kg/day - Highest Dose Tested (HDT) LOAEL: >1,000 mg/kg/day
870.3700	Prenatal developmental in rodents	Maternal NOAEL: 16 mg/kg/day Maternal LOAEL: 50 mg/kg/day based on reduced BW and BW gain and foodconsumption, increased liver weights. Developmental NOAEL: 16 mg/kg/day Developmental LOAEL: 50 mg/kg/day based on increased incidence of shortening of the 13th rib.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL: 15 mg/kg/day Maternal LOAEL: 30mg/kg/day based on BW loss and decreased food consumption. Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: > 30 mg/kg/day
870.3800	Reproduction and fertility effects	Parental systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Parental systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on decreased BW, BW gain and food consumption. Offspring systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Offspring systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in pup weight, litter size, viability and weaning indices; delay in age to attain preputial separation and vaginal opening. Reproductive NOAEL: 17.9/21.7 mg/kg/day (M/F) Reproductive LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in litter weights and individual pup weights on day of delivery.
870.4100	Chronic toxicity dogs	NOAEL: 20/21 mg/kg/day (M/F) LOAEL: 55/61 mg/kg/day (M/F) based on initial BW loss and overall reduction in BW gain.
870.4100/870.4200	Chronic toxicity/Carcinogenicity - rats	NOAEL: 7.1/8.8 mg/kg/day (M/F) LOAEL: 17.5/22.6 mg/kg/day (M/F) based on decreases in mean BW and BW gain (F) and hepatocellular vacuolation (M) Evidence of treatment-related increase in mammary tumors.
870.4300	Carcinogenicity mice	NOAEL: 20.3/75.9 mg/kg/day (M/F) LOAEL: 65.6/214.6 mg/kg/day (M/F) based on decreased BW and BW gain andamyloidosis in numerous organs (M) and decreased BW and BW gain (F). Not oncogenic under conditions of study.
870.5100	Reverse gene mutation assay	*Salmonella typhimurium/E. coli* - Not mutagenic under the conditions of the study.
870.5300	Mammalian cells in cultureForward gene mutation assay - CHO cells	Not mutagenic under the conditions of the study.
870.5375	*In vitro* mammalian chromosomal aberrations - CHO cells	Acetamiprid is a clastogen under the conditions of the study.
870.5385	*In vivo* mammalian chromosome aberrations - rat bone marrow	Acetamiprid did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenetics - micronucleus assay in mice	Acetamiprid is not a clastogen in the mouse bone marrow micronucleus test.
870.5550	UDS assay in primary rat hepatocytes/ mammalian cell culture	Acetamiprid tested negatively for UDS in mammalian hepatocytes *in vivo*.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity - rat	NOAEL: 10 mg/kg LOAEL: 30 mg/kg based on reduction in locomotor activity.
870.6200	Subchronic neurotoxicity - rat	NOAEL: 14.8/16.3 mg/kg/day (M/F) LOAEL: 59.7/67.6 mg/kg/day (M/F) based on reductions in BW, BW gain, foodconsumption and food efficiency.
N/A	28–day feeding - dog	NOAEL: 16.7/19.1 mg/kg/day (M/F) LOAEL: 28.0/35.8 mg/kg/day based on reduced BW gain.
870.7485	Metabolism - mouse, rat, rabbit Special Study	Male mice, rats or rabbits were administered single doses of acetamiprid by gavage, intraperitoneal injection (i.p.) or intravenous injection (i.v.) up to 60 mg/kg. The animals were assessed for a variety of neurobehavioral parameters. In vitro experiments were also done using isolated ileum sections from guinea pigs to assess contractile responses in the absence and presence of agonists (acetylcholine, histamine diphosphate, barium chloride and nicotine tartrate). Acetamiprid was also assessed via i.v. in rabbits for effects on respiratory rate, heart rate and blood pressure; via gavage in mice for effects on gastrointestinal motility; and via i.p. in rats for effects on water and electrolyte balance in urine, and blood coagulation, hemolytic potential and plasma cholinesterase activity. Based on a number of neuromuscular, behavioral and physiological effects of acetamiprid in male mice, under the conditions of this study, a overall NOAEL of 10 mg/kg (threshold) and LOAEL of 20 mg/kg could be estimated for a single dose by various exposure routes.
870.7485	Metabolism and pharmacokinetics - rat	Extensively and rapidly metabolized. Metabolites 79–86% of administered dose. Profiles similar for males and females for both oral and intravenous dosing. Thirty-seven percent of dose recovered in urine and feces as unchanged test article. Urinary and fecal metabolites from 15–day repeat dose experiment only showed minor differences from single-dose test. Initial Phase I biotransformation: demethylation of parent. 6-chloronicotinicacid most prevalent metabolite. Phase II metabolism shown by increase in glycine conjugate.
870.7600	Dermal absorption	The majority of the dose was washed off with the percent increasing with dose. Skin residue was the next largest portion of the dose with the percent decreasing with dose. In neither case was there evidence of an exposure related pattern. Absorption was small and increased with duration of expure. Since there are no data to demonstrate that the residues remaining on the skin do not enter the animal, then as a conservative estimate of dermal absorption, residues remaining on the skin will be added to the highest dermal absorption value. The potential total absorption at 24 hours could be approximately 30%.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology 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 intra species 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 acetamiprid used for human risk

assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACETAMIPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietarygeneral population including infants and children	NOAEL = 10 mg/kg UF = 100 ..... Acute RfD = 0.10 mg/kg/day	FQPA SF = 1 aPAD = 0.10 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 30 mg/kg based on reduction in locomotor activity in males.
Chronic Dietary all populations	NOAEL= 7.1 mg/kg/day UF = 100 ..... Chronic RfD = 0.07 mg/kg/day .	FQPA SF = 3 cPAD = 0.023 mg/kg/day	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BW gain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Incidental Oral (1 to 30 days and 1 month to 6 months) (Residential)	NOAEL= 15 mg/kg/day	LOC for MOE = 300 (Residential)	Co-critical studies: subchronic oral (rat); subchronic neurotoxicity (rat) developmental toxicity (rat); LOAEL = 50 mg/kg/day based on reductions in BW, BW gain and food consumption.
Short- and Intermediate-TermDermal (1 to 30 days; and 1 month to 6 months) (Residential)	oral study NOAEL= 17.9 mg/kg/day (dermal absorption rate = 30%	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Dermal (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Inhalation (1 to 30 days and 1 month to 6 months)(Residential)	oral study NOAEL= 17.9 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Inhalation (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Cancer (oral, dermal, inhalation) - not likely to be carcinogenic.	.....	.....	

*The reference to the FQPA Safety Factor refers to any additional safety factor that is retained due to concerns unique to the FQPA. The PAD (Population-adjusted Dose) incorporates the FQPA Safety Factor into the dose for use in risk assessment: PAD = RfD/FQPA SF.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established for the residues of acetamiprid, in or on raw agricultural commodities and no tolerances have been established for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat, milk, poultry and egg commodities. Risk assessments were conducted by EPA to assess dietary exposures from acetamiprid 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 one 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: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in

lower exposure and risk estimates than those presented here. Even without such refinement, the acute dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Dietary (food only) exposure estimates were greatest for the population subgroup composed of children ages 1–6 years old. Acute exposure is estimated to be 0.039606 mg/kg (95th percentile of exposure), which is equal to 40% of the acute population-adjusted dose (aPAD). The results are summarized in the accute dietary exposureportion of Table 3.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment 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 chronic exposure assessments: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in lower exposure and risk estimates than those presented here. Even without such refinement the chronic dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Chronic exposure is estimated to be 0.014687 mg/kg/day, which is equal to 64% of the cPAD. Although there is the potential for incidental ingestion of pesticide residues and soil from treated vegetables and foliage in home gardens via hand-to-mouth transfer, incidental oral exposure was not quantitatively assessed. Toddlers are not expected to spend a significant amount of time in a home garden and any resulting incidental oral exposures would be minimal and not quantifiable. Therefore, the Agency does not believe that incidental oral exposure from the requested homeowner uses will result in significant incidental oral exposures to children. The results are summarized in the chronic exposure portion of Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE AND CHRONIC EXPOSURE TO ACETAMIPRID

Population Subgroup	Acute		Chronic	
	95th percentile Exposure mg/kg	%aPAD	Exposure mg/kg/day	%cPAD
U.S. Population (total)	0.016921	17	0.005395	24
All Infants (<1 year old)	0.038317	38	0.010261	45
Children 1–6 years old	0.039606	40	0.014687	64
Children 7–12 years old	0.022084	22	0.008072	35
Females 13–50	0.011451	11	0.003970	17
Males 13–19	0.011627	12	0.004460	19
Males 20+ years	0.009624	10	0.003673	16
Seniors 55+	0.010242	10	0.004005	17

[1] %aPAD and %cPAD are exposures presented as percentages ofthe acute and chronic population-adjusted doses, respectively. For acetamiprid, the aPAD = 0.1 mg/kg; the cPAD = 0.023 mg/kg/day.

iii. *Cancer*. The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the historical control data from the same lab, it was within the range of values from the supplier.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for acetamiprid 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 acetamiprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, 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 %RfD or %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 acetamiprid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of acetamiprid for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 0.0008 ppb for ground water. The EECs for chronic exposures are estimated to be 4.0 ppb for surface water and 0.0008 ppb for ground water.

3. *From non-dietary exposure*. The term ''residentialexposure'' 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). Acetamiprid is proposed with this notice to be registered for use on the following residential non-dietary sites: ornamentals, flowers, vegetable gardens, and fruit trees. The risk assessment showed the following: for residential applicators, total MOEs for short- and intermediate-term residential dermal and inhalation exposures range from 1.2×10^5 to 6×10^5. For post-application activities, short- and intermediate-term MOEs range from 1.8×10^4 to 1.8 10^5 for adults and from 2.3×10^4 to 2.2×10^5 for youth ages 10–12 years. The residential uses for acetamiprid are not expected to result in long-term exposures.

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.

EEPA does not have, at this time, available data to determine whether acetamiprid 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, acetamiprid 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 acetamiprid 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. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is noquantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies. In the rat, an increase in the incidence of shortening of the 13th rib was observed in fetuses at the same LOAEL as the dams, which exhibited reduced mean body weight, body weight gain and food consumption and increased liver weights. No developmental toxicity was observed in the rabbit at dose levels that induced effects in the does: body weight loss and decreased food consumption. In the multi-generation reproduction study, qualitative evidence of increased susceptibility of rat pups is observed. The parental and offspring systemic NOAELs are 17.9/21.7 (M/F) mg/kg/day and the offspring/parental systemic LOAELs are 51.0/60.1 mg/kg/day based on a decrease in mean body weight, body weight gain and food consumption in the parents and significant reductions in pup weights in both generations, reductions in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation in the offspring. The offspring effects are considered to be more severe than the parental effects.

3. *Conclusion*. There is a complete toxicity data base for acetamiprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency FQPA Safety Factor Committee recommended that the FQPA safety factor be reduced to 3x in assessing the risk posed by this chemical. The Committee determined that the safety factor is necessary when assessing the risk posed by acetamiprid because there is qualitative evidence of increased susceptibility following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats. However, the Committee concluded that the safety factor could be reduced to 3x for acetamidprid because the toxicology database is complete; there is no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure of rat and rabbit fetuses; the dietary (food and water) and residential exposure assessments will not underestimate the potential exposures for infants, children, and/or women of childbearing age; and the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study and a safety factor. The Committee recommended that the safety factor be required for all population subgroups when assessing chronic dietary exposures as well as when assessing residential short-, intermediate-, and long-term exposure durations to address the concern for the effects seen following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats; the FQPA Safety Factor can be removed (i.e., reduced to 1x) when assessing acute dietary exposure.

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 drinking water level of concerns (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 from food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the population adjusted dose (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 aggregate risk assessment scenario: 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 from food to acetamiprid will occupy 17% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 38% of the aPAD for all infants (<1 year old) and 40% of the aPAD for children ages 1–6 years. In addition, there is potential for acute dietary exposure to acetamiprid 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 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ACETAMIPRID

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppd)[a]
U.S. Population	0.10	17	0.0008	17	2,900
All Infants (<1 year old)	0.10	38	0.0008	17	620
Children 1–6 years	0.10	40	0.0008	17	600
Children 7–12 years	0.10	22	0.0008	17	780
Females 13–50 years	0.10	11	0.0008	17	2,700
Males 13–19 years	0.10	12	0.0008	17	3,100
Males 20+ years	0.10	10	0.0008	17	3,200
Seniors (55+ years)	0.10	10	0.0008	17	3,100

[a] Drinking Water Level of Comparison = aPAD-Acute DietaryExposure (mg/kg/day) × body weight (kg) × 1,000 μg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetamiprid from food will utilize 24% of the cPAD for the U.S. population, 45% of the cPAD for all infants (< 1 year old) and 64% of the cPAD for children ages 1–6 years. Based on the use pattern, chronic residential exposure to residues of acetamiprid is not expected. In addition, there is potential for chronic dietary exposure to acetamiprid 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 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
U.S. Population	0.023	24	0.0008	4	620
All Infants (<1 year old)	0.023	45	0.0008	4	130
Children 1–6 years old	0.023	64	0.0008	4	80
Children 7–12 years old	0.023	35	0.0008	4	150
Females 13–50 years old	0.023	17	0.0008	4	670

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
Males 13–19 years old	0.023	19	0.0008	4	650
Males 20+ years old	0.023	16	0.0008	4	680
Seniors (55+ years old)	0.023	17	0.0008	4	670

[a] Chronic Drinking Water Level of Comparison = cPAD-Chronic Dietary Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

3. *Short-term risk and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently proposed for uses that could result in short-term and intermediate residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate exposures for acetamiprid. Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that aggregated food and residential exposures aggregated result in aggregate MOEs of 18,000 for adults, and 23,000 for youth (ages 10–12 years) for the non-oral routes of exposure (i.e., combined dermal and/or inhalation pathways). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of acetamiprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURE TO ACETAMIPRID

Population Subgroup	MOE (Food)[a]	Total Non-Oral MOE[b]	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term and Intermediate-Term DWLOC (ppd)[c,d]
U.S. Population	2,780	18,000	4	0.0008	1,500
All Infants (<1 year old)	1,462	N/A[e]	4	0.0008	400
Children 1–6 years old	1,021	N/A	4	0.0008	400
Children 7–12 years old	1,858	23,000	4	0.0008	400
Females 13–50 years old	3,778	18,000	4	0.0008	1,400
Males 13–19 years old	3,363	18,000	4	0.0008	1,600
Males 20+ years old	4,084	18,000	4	0.0008	1,600
Seniors (55+ years old)	3,745	18,000	4	0.0008	1,600

[a] Food MOE = Short-term NOAEL (15 mg/kg/day) ÷Chronic Dietary Exposure (food only)
[b] Total non-oral MOEs are from the Occupational and Residential Risk Assessment. Note that given the currently requested use patterns, incidental oral exposure is an insignificant pathway of exposure and has not been factored into the DWLOCs.
[c] Maximum Water Exposure = Short/Intermediate-term NOAEL (15 mg/kg/day) × (1 ÷ Target MOE) - (1 ÷ Food MOE + 1 ÷ Oral MOE + 1 ÷ Non-Oral MOE)
[d] Short- and Intermediate-term Drinking Water Level of Concern = Maximum Water Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.
[e] N/A = Not Applicable

4. *Aggregate cancer risk for U.S. population*. The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the laboratories historical control data from the same lab: the increase was within the range of values from the supplier.

5. *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 acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Enforcement methods are available for vegetable and non-citrus crops, citrus crops, and livestock commodities. Citrus and livestock methods consist of solvent extraction, followed by solid-phase cleanup, and high performance liquid chromatography/ultraviolet determination of residues. The vegetable and non-citrus crop method differs in that it employs gas chromatography/

electron capture detection determination of residues. The livestock method analyzes acetamiprid and IM-2-1 simultaneously. Limits of quantitation are 0.01 ppm for vegetable and non-citrus fruits, meat, milk, fat, and eggs; and 0.05 ppm for citrus and meat byproducts. Adequate radiovalidation and independent laboratory validation (ILV) data have been received and the method was forwarded to the Analytical Chemistry Laboratory (ACL) for petition method validation (PMV). The petitioner will be required to make any modifications or revision to the proposed enforcement method resulting from PMV. When the PMV is finalized, the method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for acetamiprid in or on citrus fruit group, citrus dried pulp, cotton, fruiting and leafy, leafy vegetables, tomato paste; and for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) in or on fat, meat, and meat byproducts of cattle, goat, hog, horse, and sheep; milk; poultry eggs, fat, liver, and meat.

C. Conditions

The conditions of the acetamiprid registration contained the following confirmatory data and label requirements: rotational crop storage stability; and radiovalidation data for IM-2-1-amide in ruminant muscle. The storage stability data is considered confirmatory data since the Agency has examined other storage stability data of acetamiprid and found it to be stable upon storage. The Agency decided to impose tolerances on meat and poultry products upon review of the data although tolerances for IM-2-1 were not considered by the registrant in the original submission.

V. Conclusion

Therefore, tolerances are established for residues of acetamiprid N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-N1-methylacetamidine in or on citrus fruit group, citrus dried pulp, cotton undelinted seed, cotton gin byproducts, fruiting vegetable group, grape, leafy vegetable group (except brassica), leafy vegetable brassica group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; eggs; fat, liver and meat of poultry.

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–301225 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 May 28, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.

EEPA 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–301225, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption.

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104– 113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

James Jones,

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 374.

2. Section 180.578 is added to read as follows:

§ 180.578 Acetamiprid; tolerances forresidues.

(a) *General.* (1) Tolerances are established for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on the following commodities:

Commodity	Parts per million
Citrus, dried pulp	1.20
Cotton, gin byproducts	20.0
Cotton, undelinted seed	0.60
Fruit, citrus group	0.50
Fruit, pome group	1.0
Grape	0.20
Tomato, paste	0.40
Vegetable, brassica, leafy group	1.20

Commodity	Parts per million
Vegetable, fruiting group	0.20
Vegetable, leafy group, except brassica	3.00

(2) Tolerances are established for the combined residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine andN1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-acetamidine in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat	0.10
Cattle, meat byproducts	0.20
Egg	0.010
Goat, fat	0.10
Goat, meat	0.10
Goat, meat byproducts	0.20
Hog, fat	0.10
Hog, meat	0.10
Hog, meat byproducts	0.20
Horse, fat	0.10
Horse, meat	0.10
Horse, meat byproducts	0.20
Milk	0.10
Poultry, fat	0.010
Poultry, liver	0.050
Poultry, meat	0.010
Sheep, fat	0.10
Sheep, meat	0.10
Sheep, meat byproducts	0.20

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–7098 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket Nos. 98–137, ASD File No. 98–91; FCC 99–397]

1998 Biennial Regulatory Review—Review of the Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules published in the **Federal Register** on April 10, 2000. These rules amend the Commission's rules governing the depreciation requirements for price cap incumbent local exchange carriers. The Commission details the reporting and data requirements that the carriers must comply with when they want to change their prescribed depreciation rate.

DATES: Section 43.43 paragraphs (c) and (e) published at 65 FR 18926 (April 10, 2000) became effective on June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, (202–418–1575).

SUPPLEMENTARY INFORMATION: On June 19, 2000 Office of Management and Budget (OMB) approved the amendment to the depreciation rate rules § 43.43 (c) and (e) pursuant to OMB Control No. 3060–0168. Accordingly, the rules in § 43.43 (c) and (e) became effective on June 29, 2000.

List of Subjects in 47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7262 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 032102B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002.

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

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

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone was reached on March 22, 2002. Accordingly, the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone is closed effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1

through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

NMFS previously determined that the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone was reached and closed that segment of the fishery on November, 10, 2001 (66 FR 57396, November 15, 2001). Next, the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on November 19, 2001 (66 FR 58410, November 21, 2001). Subsequently, NMFS determined that the commercial quota that the commercial quota for Gulf group king mackerel for vessels fishing with run-around gillnets in the southern Florida west coast subzone was reached and closed that segment of the fishery on January 28, 2002 (67 FR 4677, January 31, 2002). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the southern Florida west coast subzone through June 30, 2002.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

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

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

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

Dated: March 22, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–7329 Filed 3–22–02; 2:24 pm]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 59
Wednesday, March 27, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to Certificate of Compliance (CoC) Number 1014. This amendment will modify the present cask system design, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment will also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to applicable CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: The final rule is effective June 10, 2002, unless significant adverse comments are received by April 26, 2002. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

CoC No. 1014, the revised Technical Specifications, the underlying Safety Evaluation Report for Amendment No. 1, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov,* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec HI-STORM 100 cask design and added it to the list of

NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1014.

Discussion

On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. No other changes to the Holtec HI-STORM 100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Holtec HI-STORM 100 cask design listing in § 72.214 by adding Amendment No. 1 to CoC No. 1014. The amendment consists of changes to the Technical Specifications as described above in the ''Discussion'' portion of this document. The particular Technical Specifications that are changed are identified in the NRC staff's Safety Evaluation Report for Amendment 1.

The amended Holtec HI-STORM 100 cask system, when used in accordance with the conditions specified in the CoC, the Technical Specifications, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1014 is revised by adding the effective date of the initial certificate, and the effective date of Amendment Number 1.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI-STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by April 26 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Holtec HI-STORM 100 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR

Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Holtec HI-STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specification for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to Part 72 that approved the Holtec HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On July 3, 2001, and as supplemented on August 13 and 17, and October 5, 12, and 19, 2001, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to permit a Part 72 licensee to: (1) Add four new multipurpose canisters—three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new containers for damaged fuel; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and (6) allow the storage of selected nonfuel hardware. The amendment also will utilize revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications will be made to Conditions 1.a., 1.b., 2, 3, 5, 9, 10, and 11 of the CoC; Sections 3.0 and 5.0 of Appendix A to the CoC; and Sections 1.0, 2.0, and 3.0 of Appendix B to the CoC to reflect the changes.

The alternative to this action is to withhold approval of this amended cask system design and issue a site-specific license to each licensee. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption or a site-specific license.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping

requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014
Initial Certificate Effective Date: June 1, 2000
Amendment Number 1 Effective Date: June 10, 2002
SAR Submitted by: Holtec International
SAR Title: Final Safety Analysis Report for the HI-STORM 100 Cask System
Docket Number: 72–1014
Certificate Expiration Date: June 1, 2020
Model Number: HI-STORM 100

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7320 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–05–AD; Amendment 39–12684; AD 2002–06–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines, installed on Airbus Industrie A330 series airplanes. This action requires initial and repetitive pressure testing of the directional pilot valve (DPV) assembly, with replacement of DPV assemblies that fail the pressure test, or, replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or, deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done. This amendment is prompted by a review of thrust reverser safety analyses following a report of inadvertent thrust reverser deployment on another make and model engine. The actions specified in this AD are intended to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Effective May 1, 2002. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 1, 2002.

Comments for inclusion in the Rules Docket must be received on or before May 28, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA received a report of inadvertent thrust reverser deployment on a Pratt & Whitney powered Airbus Industrie A300–600 series airplane. Following that event, the FAA reviewed thrust reverser safety analyses on other make and model engines, including GE CF6–80E1 series turbofan engines that are used on Airbus Industrie A330 series airplanes. A review of thrust reverser actuation system (TRAS) shop findings and component failure rate data, test data, and system safety analyses revealed that a hidden failure mode involving the directional pilot valve (DPV) assembly exists. The DPV assembly controls the direction of the operation of the center drive unit when the TRAS is activated. If high pressure downstream of the pressure regulating and shutoff valve (PRSOV) exists in combination with a leaking DPV assembly, an inadvertent deployment could occur. High pressure downstream of the PRSOV can be caused by auto-restow of the thrust reverser, PRSOV open failures, or significant PRSOV leakage. PRSOV open failures and significant PRSOV leakage are detected by the DPV assembly pressure switch. DPV assembly open failures and significant DPV assembly leakage are detected by the inability to stow the reverser. However, there exists a range of DPV assembly leakage rates from a closed DPV assembly which are not detectable during normal operation.

This undetectable failure mode of the DPV assembly, concurrent with high pressure downstream of the PRSOV, can result in an inadvertent thrust reverser deployment. This condition, if not corrected, could result in inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, that describes procedures for thrust reverser inspections and checks, and DPV assembly replacement.

FAA's Determination of an Unsafe Condition and Required Actions

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–80E1 series turbofan engines of the same type design, installed on Airbus Industrie A330 series airplanes, this AD is being issued to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane. This AD requires:

- Initial and repetitive pressure testing of the DPV assembly, with replacement of DPV assemblies that fail the pressure test, or
- Replacing the DPV assembly without performing pressure testing, with a serviceable DPV assembly, or
- Deactivating the fan reverser for no longer than 10 days until replacement of the DPV assembly is done.

The actions are required to be done in accordance with the service bulletin described previously.

Immediate Adoption of This AD

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–05–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2002–06–07 General Electric Company: Amendment 39–12684. Docket No. 2002–NE–05–AD.

Applicability

This airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–80E1 series turbofan engines that are installed on Airbus Industrie A330 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

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

To prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, do the following:

(a) Perform one of the following, in accordance with paragraphs 2.B. and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001, before exceeding 7,000 flight hours time-since-new (TSN) or 1,000 flight hours time-in-service (TIS) after the effective date of this AD:

(1) Perform a directional pilot valve (DPV) assembly pressure check for leakage, and, if necessary, do one of the following:

(i) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly, and then perform a system test of the thrust reverser.

(b) Thereafter, at intervals not to exceed 7,000 flight hours TIS since the last check or replacement of the DPV assembly, perform one of the following, in accordance with paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001:

(1) Perform a DPV assembly pressure check for leakage, and, if necessary, either:

(i) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser, or

(ii) Deactivate the thrust reverser. However, the DPV assembly must be replaced with a serviceable assembly, and a system test of the thrust reverser performed within 10 days after deactivation.

(2) Replace the DPV assembly with a serviceable assembly and then perform a system test of the thrust reverser.

Definition of Serviceable DPV Assembly

(c) For the purpose of this AD, a serviceable DPV assembly is an assembly that has either accumulated zero TSN, or has accumulated zero TIS after having passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, or has been successfully leak checked in accordance with paragraph 2.B. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A5053, dated October 30, 2001.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions required by this AD must be done in accordance with Middle River Aircraft Systems CF6–80E1 Alert Service Bulletin (ASB) No. 78A5053, dated October 30, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 1, 2002.

Issued in Burlington, Massachusetts, on March 14, 2002.

Francis A. Favara,

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

[FR Doc. 02–6912 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–07–AD; Amendment 39–12687; AD 2002–06–10]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to replace the metered connector and oxygen tubing and related components in the rear seat bench. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

DATES: This AD becomes effective on May 6, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 6, 2002.

ADDRESSES: You may get the service information referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that, because of a design problem, the flow of oxygen to each occupant on the rear seat bench is insufficient. The current configuration uses two-metered connectors, which restricts the flow of oxygen.

What Is the Potential Impact if FAA Took No Action?

If not corrected, insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions could occur. This condition could result in reduced occupant safety at the rear bench seat location.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 2, 2002 (67 FR 29). The NPRM proposed to require you to replace the two-metered connector and oxygen tubing with a system that incorporates a single-metered connector in the rear seat bench.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 5 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	Pilatus will provide free parts	$120	$600

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is ''within the next 30 calendar days after the effective date of this AD''.

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The oxygen flow on the rear bench seat is reduced through two metered connectors when only one reduction is necessary. Because these parts of poor design could have been installed in the field or at the factory, the problem has the same chance of occurring on an airplane with 50 hours TIS as one with 1,000 hours TIS. Therefore, we believe that 30 calendar days will:

—Ensure that the unsafe condition does not go undetected for a long period of time on the affected airplanes; and

—Not inadvertently ground any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–06–10 Pilatus Aircraft Ltd.: Amendment 39–12687; Docket No. 2001–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers with rear bench seats (part number 525.22.12.016) installed, that are certificated in any category:

Model	Serial Nos.
PC–12 and PC–12/45	From 101 through 365

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the potential for insufficient oxygen quantity that is available to occupants of the rear seat bench in some emergency conditions. This condition could result in reduced occupant safety at the rear bench seat location.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Remove the oxygen tubing and connector assembly, the oxygen tubing support bracket and grommet assembly, and the hose clamp (or FAA-approved equivalent parts) from the rear bench seat (part number 525.22.12.016). Replace these parts with parts of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	Within the next 30 days after May 6, 2002 (the effective date of this AD), unless already accomplished.	Follow the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

Actions	Compliance	Procedures
(2) Do not install any of the components referenced in paragraph (d)(1) of this AD unless they are of improved design as specified in the service bulletin (or FAA-approved equivalent parts).	As of May 6, 2002 (the effective date of this AD).	As specified in (Pilatus Aircraft Ltd., PC–12 Service Bulletin No. 35–002, dated December 19, 2000.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Pilatus Aircraft Ltd. PC–12 Service Bulletin No. 35–002, dated December 19, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland, or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Swiss AD HB 2001–001, dated December 28, 2000.

(i) *When does this amendment become effective?* This amendment becomes effective on May 6, 2002.

Issued in Kansas City, Missouri, on March 14, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–6911 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–8071; 34–45601 35–27505; 39–2396; IC–25471; and IA–2021]

Approved Information Collections

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules concerning information collection requirements under the Paperwork Reduction Act to update the display of OMB control numbers associated with the Commission's collection of information. The display does not alter any Commission collection of information.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Michael E. Bartell, Associate Executive Director at U.S. Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, 202–942–8800.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is updating the information displayed at 17 CFR 200.800. This amendment sets forth control numbers assigned by the Office of Management and Budget to information collection requirements of the Commission as of the date of this release. The Commission finds that this amendment pertains to agency organization, procedure, or practice and is therefore not subject to the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring advance notice and opportunity for public comment prior to publication. In addition, the Commission finds good cause for immediate effectiveness upon publication in the **Federal Register**. Delayed effectiveness is unnecessary because this is a technical amendment and will not affect any rights or obligations of members of the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy.

Text of Amendment

For the reasons set forth in the Preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The title to Subpart N and Subpart N are revised to read as follows:

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose:* This subpart collects and displays the control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.* This subpart displays current OMB control numbers for those information collection requirements of the Commission that are rules and regulations and codified in 17 CFR either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–X	PART 210	3235–0009

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Regulation S–B	PART 228	3235–0417
Regulation S–K	PART 229	3235–0071
Rule 154	230.154	3235–0495
Rule 155	230.155	3235–0549
Rule 236	230.236	3235–0095
Rule 237	230.237	3235–0528
Regulation A	230.251 thru 230.263	3235–0286
Regulation C	230.400 thru 230.494	3235–0074
Rule 425	230.425	3235–0521
Rule 477	230.477	3235–0550
Rule 489	230.489	3235–0411
Rule 498	230.498	3235–0488
Regulation D	230.501 thru 230.506	3235–0076
Regulation E	230.601 thru 230.610a	3235–0232
Rule 604	230.604	3235–0232
Rule 605	230.605	3235–0232
Rule 609	230.609	3235–0233
Rule 701	230.701	3235–0522
Regulation S	230.901 thru 230.905	3235–0357
Regulation S–T	Part 232	3235–0424
Form SB–1	239.9	3235–0423
Form SB–2	239.10	3235–0418
Form S–1	239.11	3235–0065
Form S–2	239.12	3235–0072
Form S–3	239.13	3235–0073
Form N–2	239.14	3235–0026
Form N–1A	239.15A	3235–0307
Form S–6	239.16	3235–0184
Form S–8	239.16b	3235–0066
Form N–3	239.17a	3235–0316
Form N–4	239.17b	3235–0318
Form S–11	239.18	3235–0067
Form N–14	239.23	3235–0336
Form N–5	239.24	3235–0169
Form S–4	239.25	3235–0324
Form F–1	239.31	3235–0258
Form F–2	239.32	3235–0257
Form F–3	239.33	3235–0256
Form F–4	239.34	3235–0325
Form F–6	239.36	3235–0292
Form F–7	239.37	3235–0383
Form F–8	239.38	3235–0378
Form F–9	239.39	3235–0377
Form F–10	239.40	3235–0380
Form F–80	239.41	3235–0404
Form F–X	239.42	3235–0379
Form F–N	239.43	3235–0411
Form ET	239.62	3235–0329
Form ID	239.63	3235–0328
Form SE	239.64	3235–0327
Form TH	239.65	3235–0425
Form 1–A	239.90	3235–0286
Form 2–A	239.91	3235–0286
Form 144	239.144	3235–0101
Form 1–E	239.200	3235–0232
Form CB	239.800	3235–0518
Rule 6a–1	240.6a–1	3235–0017
Rule 6a–3	240.6a–3	3235–0021
Rule 6a–4	240.6a–4	3235–0554
Rule 6h–1	240.6h–1	3235–0555
Rule 8c–1	240.8c–1	3235–0514
Rule 9b–1	240.9b–1	3235–0480
Rule 10a–1	240.10a–1	3235–0475
Rule 10b–10	240.10b–10	3235–0444
Rule 10b–17	240.10b–17	3235–0476
Rule 10b–18	240.10b–18	3235–0474
Rule 10A–1	240.10A–1	3235–0468
Rule 11a1–1(T)	240.11a1–1(T)	3235–0478
Rule 11Aa3–2	240.11Aa3–2	3235–0500
Rule 11Ab2–1	240.11Ab2–1	3235–0043
Rule 11Ac1–3	240.11Ac1–3	3235–0435
Rule 11Ac1–4	240.11Ac1–4	3235–0462

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 11Ac1–5	240.11Ac1–5	3235–0542
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–6	240.11Ac1–6	3235–0541
Rule 11Ac1–7	240.11Ac1–7	3235–0543
Rule 12a–5	240.12a–5	3235–0079
Regulation 12B	240.12b–1 thru 240.12b–36	3235–0062
Rule 12d1–3	240.12d1–3	3235–0109
Rule 12d2–1	240.12d2–1	3235–0081
Rule 12d2–2	240.12d2–2	3235–0080
Rule 12f–1	240.12f–1	3235–0128
Rule 13a–16	240.13a–16	3235–0116
Regulation 13D/G	240.13d–1 thru 240.13d–7	3235–0145
Schedule 13D	240.13d–101	3235–0145
Schedule 13G	240.13d–102	3235–0145
Rule 13e–1	240.13e–1	3235–0305
Rule 13e–3	240.13e–3	3235–0007
Schedule 13E–3	240.13e–100	3235–0007
Schedule 13e–4F	240.13e–101	3235–0375
Regulation 14A	240.14a–1 thru 240.14a–12	3235–0059
Schedule 14A	240.14a–101	3235–0059
Regulation 14C	240.14c–1	3235–0057
Schedule 14C	240.14c–101	3235–0057
Regulation 14D	240.14d–1 thru 240.14d–9	3235–0102
Schedule TO	240.14d–100	3235–0515
Schedule 14D–1	240.14d–101	3235–0102
Schedule 14D–9	240.14d–101	3235–0102
Schedule 14D–1F	240.14d–102	3235–0376
Schedule 14D–9F	240.14d–103	3235–0382
Regulation 14E	240.14e–1 thru 240.14e–2	3235–0102
Rule 14f–1	240.14f–1	3235–0108
Rule 15a–4	240.15a–4	3235–0010
Rule 15a–6	240.15a–6	3235–0371
Rule 15b1–1	240.15b1–1	3235–0012
Rule 15b6–1(a)	240.15b6–1(a)	3235–0018
Rule 15c1–5	240.15c1–5	3235–0471
Rule 15c1–6	240.15c1–6	3235–0472
Rule 15c1–7	240.15c1–7	3235–0134
Rule 15c2–1	240.15c2–1	3235–0485
Rule 15c2–5	240.15c2–5	3235–0198
Rule 15c2–7	240.15c2–7	3235–0479
Rule 15c2–8	240.15c2–8	3235–0481
Rule 15c2–11	240.15c2–11	3235–0202
Rule 15c2–12	240.15c2–12	3235–0372
Rule 15c3–1	240.15c3–1	3235–0200
Rule 15c3–1(c)(13)	240.15c3–1(c)(13)	3235–0499
Appendix F to Rule 15c3–1	240.15c3–1f	3235–0496
Rule 15c3–3	240.15c3–3	3235–0078
Rule 15c3–4	240.15c3–4	3235–0497
Rule 15d–16	240.15d–16	3235–0116
Rule 15g–2	240.15g–2	3235–0434
Rule 15g–3	240.15g–3	3235–0392
Rule 15g–4	240.15g–4	3235–0393
Rule 15g–5	240.15g–5	3235–0394
Rule 15g–6	240.15g–6	3235–0395
Rule 15g–9	240.15g–9	3235–0385
Rule 15Aj–1	240.15Aj–1	3235–0044
Rule 15Ba2–1	240.15Ba2–1	3235–0083
Rule 15Ba2–5	240.15Ba2–5	3235–0088
Rule 15Bc3–1	240.15Bc3–1	3235–0087
Rule 17a–1	240.17a–1	3235–0208
Rule 17a–2	240.17a–2	3235–0201
Rule 17a–3	240.17a–3	3235–0033
Rule 17a–3(a)(16)	240.17a–3(a)(16)	3235–0508
Rule 17a–4	240.17a–4	3235–0279
Rule 17a–4(b)(10)	240.17a–4(b)(10)	3235–0506
Rule 17a–5	240.17a–5	3235–0123
Rule 17a–5(c)	240.17a–5(c)	3235–0199
Rule 17a–6	240.17a–6	3235–0489
Rule 17a–7	240.17a–7	3235–0131
Rule 17a–8	240.17a–8	3235–0092
Rule 17a–9T	240.17a–9T	3235–0524
Rule 17a–10	240.17a–10	3235–0122

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Rule 17a–11	240.17a–11	3235–0085
Rule 17a–12	240.17a–12	3235–0498
Rule 17a–13	240.17a–13	3235–0035
Rule 17a–19	240.17a–19	3235–0133
Rule 17a–22	240.17a–22	3235–0196
Rule 17a–25	240.17a–25	3235–0540
Rule 17f–1(b)	240.17f–1(b)	3235–0032
Rule 17f–1(c)	240.17f–1(c)	3235–0037
Rule 17f–1(g)	240.17f–1(g)	3235–0290
Rule 17f–2(a)	240.17f–2(a)	3235–0034
Rule 17f–2(c)	240.17f–2(c)	3235–0029
Rule 17f–2(d)	240.17f–2(d)	3235–0028
Rule 17f–2(e)	240.17f–2(e)	3235–0031
Rule 17f–5	240.17f–5	3235–0269
Rule 17h–1T	240.17h–1T	3235–0410
Rule 17h–2T	240.17h–2T	3235–0410
Rule 17Ab2–1	240.17Ab2–1(a)	3235–0195
Rule 17Ac2–1	240.17Ac2–1	3235–0084
Rule 17Ad–2(c), (d), and (h)	240.17Ad–2(c), (d) and (h)	3235–0130
Rule 17Ad–3(b)	240.17Ad–3(b)	3235–0473
Rule 17Ad–4 (b) and (c)	240.17Ad–4(b) and (c)	3235–0341
Rule 17Ad–6	240.17Ad–6	3235–0291
Rule 17Ad–7	240.17Ad–7	3235–0291
Rule 17Ad–10	240.17Ad–10	3235–0273
Rule 17Ad–11	240.17Ad–11	3235–0274
Rule 17Ad–13	240.17Ad–13	3235–0275
Rule 17Ad–15	240.17Ad–15	3235–0409
Rule 17Ad–16	240.17Ad–16	3235–0413
Rule 17Ad–17	240.17Ad–17	3235–0469
Rule 19b–1	240.19b–1	3235–0354
Rule 19b–4	240.19b–4	3235–0045
Rule 19b–4(e)	240.19b–4(e)	3235–0504
Rule 19b–5	240.19b–5	3235–0507
Rule 19b–7	240.19b–7	3235–0553
Rule 19d–1	240.19d–1(b) thru 240.19d–1(i)	3235–0206
Rule 19d–2	240.19d–2	3235–0205
Rule 19d–3	240.19d–3	3235–0204
Rule 19h–1	240.19h–1(a), (c) thru (e), and (g)	3235–0259
Rule 24b–1	240.24b–1	3235–0194
Rule 101	242.101	3235–0464
Rule 102	242.102	3235–0467
Rule 103	242.103	3235–0466
Rule 104	242.104	3235–0465
Rule 301	242.301	3235–0509
Rule 302	242.302	3235–0510
Rule 303	242.303	3235–0505
Regulation FD	243.100 thru 243.103	3235–0536
Regulation S–P	Part 248	3235–0537
Form 1	249.1	3235–0017
Form 1–N	249.10	3235–0554
Form 25	249.25	3235–0080
Form 26	249.26	3235–0079
Form 3	249.103	3235–0104
Form 4	249.104	3235–0287
Form 5	249.105	3235–0362
Form 8–A	249.208a	3235–0056
Form 10	249.210	3235–0064
Form 10–SB	249.210b	3235–0419
Form 18	249.218	3235–0121
Form 20–F	249.220f	3235–0288
Form 40–F	249.240f	3235–0381
Form 6–K	249.306	3235–0116
Form 8–K	249.308	3235–0060
Form 10–Q	249.308a	3235–0070
Form 10–QSB	249.308b	3235–0416
Form 10–K	249.310	3235–0063
Form 10–KSB	249.310b	3235–0420
Form 11–K	249.311	3235–0082
Form 18–K	249.318	3235–0120
Form 12B–25	249.322	3235–0058
Form 15	249.323	3235–0167
Form 13F	249.325	3235–0006

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Form SE	249.444	3235–0327
Form ET	249.445	3235–0329
Form ID	249.446	3235–0328
Form DF	249.448	3235–0482
Form BD	249.501	3235–0012
Form BDW	249.501a	3235–0018
Form BD–N	249.501b	3235–0556
Form X–17A–5	249.617	3235–0123
Form X–17A–19	249.635	3235–0133
Form ATS	249.637	3235–0509
Form ATS–R	249.638	3235–0509
Form X–15AJ–1	249.802	3235–0044
Form X–15AJ–2	249.803	3235–0044
Form 19b–4	249.819	3235–0045
Form 19b–4(e)	249.820	3235–0504
Form Pilot	249.821	3235–0507
Form SIP	249.1001	3235–0043
Form MSD	249.1100	3235–0083
Form MSDW	249.1110	3235–0087
Form X–17F–1A	249.1200	3235–0037
Form TA–1	249b.100	3235–0084
Form TA–W	249b.101	3235–0151
Form TA–2	249b.102	3235–0337
Form CA–1	249b.200	3235–0195
Rule 1(a)	250.1(a)	3235–0170
Rule 1(b)	250.1(b)	3235–0170
Rule 1(c)	250.1(c)	3235–0164
Rule 2	250.2	3235–0161
Rule 3	250.3	3235–0160
Rule 7	250.7	3235–0165
Rule 7(d)	250.7(d)	3235–0165
Rule 20(b)	250.20(b)	3235–0125
Rule 20(c)	250.20(c)	3235–0125
Rule 20(d)	250.20(d)	3235–0163
Rule 23	250.23	3235–0125
Rule 24	250.24	3235–0126
Rule 26	250.26	3235–0183
Rule 29	250.29	3235–0149
Rule 44	250.44	3235–0147
Rule 45	250.45	3235–0154
Rule 47(b)	250.47(b)	3235–0163
Rule 52	250.52	3235–0369
Form 53	250.53	3235–0426
Rule 54	250.54	3235–0427
Rule 57(a)	250.57(a)	3235–0428
Rule 57(b)	250.57(b)	3235–0429
Rule 58	250.58	3235–0457
Rule 62	250.62	3235–0152
Rule 71(a)	250.71(a)	3235–0173
Rule 72	250.72	3235–0149
Rule 83	250.83	3235–0181
Rule 87	250.87	3235–0552
Rule 88	250.88	3235–0182
Rule 93	250.93	3235–0153
Rule 94	250.94	3235–0153
Rule 95	250.95	3235–0162
Rule 100(a)	250.100(a)	3235–0125
Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies, Public Utility Holding Company Act of 1935.	Part 256	3235–0153
Preservation and Destruction of Records of Registered Public Utility Holding Companies and of Mutual and Subsidiary Service Companies.	Part 257	3235–0306
Form U5A	259.5a	3235–0170
Form U5B	259.5b	3235–0170
Form U5S	259.5s	3235–0164
Form U–1	259.101	3235–0125
Form U–13–1	259.113	3235–0182
Form U–6B–2	259.206	3235–0163
Form U–57	259.207	3235–0428
Form U–9C–3	259.208	3235–0457
Form U–12(I)–A	259.212a	3235–0173

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Form U–12(I)–B	259.212b	3235–0173
Form U–13E–1	259.213	3235–0162
Form U–R–1	259.221	3235–0152
Form U–13–60	259.313	3235–0153
Form U–3A–2	259.402	3235–0161
Form U–3A3–1	259.403	3235–0160
Form U–7D	259.404	3235–0165
Form U–33–S	259.405	3235–0429
Form ET	259.601	3235–0329
Form ID	259.602	3235–0328
Form SE	259.603	3235–0327
Rule 7a–15 thru 7a–37	260.7a–15 thru 260.7a–37	3235–0132
Form T–1	269.1	3235–0110
Form T–2	269.2	3235–0111
Form T–3	269.3	3235–0105
Form T–4	269.4	3235–0107
Form ET	269.6	3235–0329
Form ID	269.7	3235–0328
Form SE	269.8	3235–0327
Form T–6	269.9	3235–0391
Rule 0–1	270.0–1	3235–0531
Rule 2a–7	270.2a–7	3235–0268
Rule 2a19–1	270.2a19–1	3235–0332
Rule 3a–4	270.3a–4	3235–0459
Rule 6c–7	270.6c–7	3235–0276
Rule 6e–2	270.6e–2	3235–0177
Rule 7d–1	270.7d–1	3235–0311
Rule 7d–2	270.7d–2	3235–0527
Section 8(b) of the Investment Company Act of 1940	270.8b–1 thru 270.8b–32	3235–0176
Rule 10f–3	270.10f–3	3235–0226
Rule 11a–2	270.11a–2	3235–0272
Rule 11a–3	270.11a–3	3235–0358
Rule 12b–1	270–12b–1	3235–0212
Rule 17a–7	270.17a–7	3235–0214
Rule 17a–8	270.17a–8	3235–0235
Rule 17e–1	270.17e–1	3235–0217
Rule 17f–1	270.17f–1	3235–0222
Rule 17f–2	270.17f–2	3235–0223
Rule 17f–4	270.17f–4	3235–0225
Rule 17f–6	270.17f–6	3235–0447
Rule 17f–7	270–17f–7	3235–0529
Rule 17g–1(g)	270.17g–1(g)	3235–0213
Rule 17j–1	270.17j–1	3235–0224
Rule 18f–1	270.18f–1	3235–0211
Rule 18f–3	270.18f–3	3235–0441
Rule 19a–1	270.19a–1	3235–0216
Rule 20a–1	270–20a–1	3235–0158
Rule 22d–1	270–22d–1	3235–0310
Rule 23c–1	270.23c–1	3235–0260
Rule 23c–3	270.23c–3	3235–0422
Rule 27e–1	270.27e–1	3235–0545
Rule 30b2–1	270.30b2–1	3235–0220
Rule 30d–2	270.30d–2	3235–0494
Rule 30e–1	270.30e–1	3235–0025
Rule 31a–1	270.31a–1	3235–0178
Rule 31a–2	270.31a–2	3235–0179
Rule 32a–4	270.32a–4	3235–0530
Rule 34b–1	270.34b–1	3235–0346
Rule 35d–1	270–35d–1	3235–0548
Form N–5	274.5	3235–0169
Form N–8A	274.10	3235–0175
Form N–2	274.11a–1	3235–0026
Form N–3	274.11b	3235–0316
Form N–4	274.11c	3235–0318
Form N–8B–2	274.12	3235–0186
Form N–6F	274.15	3235–0238
Form 24F–2	274.24	3235–0456
Form N–18F–1	274.51	3235–0211
Form N–54A	274.53	3235–0237
Form N–54C	274.54	3235–0236
Form N–SAR	274.101	3235–0330
Form N–27E–1	274.127e–1	3235–0545

Information collection requirement	17 CFR part or section where identified and described	Current OMB Control No.
Form N–27F–1	274.127f–1	3235–0546
Form N–17D–1	274.200	3235–0229
Form N–23C–1	274.201	3235–0230
Form N–8F	274.218	3235–0157
Form N–17F–1	274.219	3235–0359
Form N–17F–2	274.220	3235–0360
Form N–23c–3	274.221	3235–0422
Form ET	274.401	3235–0329
Form ID	274.402	3235–0328
Form SE	274.403	3235–0327
Rule 0–2	275.0–2	3235–0240
Rule 203–3	275.203–3	3235–0538
Rule 204–2	275.204–2	3235–0278
Rule 204–3	275.204–3	3235–0047
Rule 206(3)–2	275.206(3)–2	3235–0243
Rule 206(4)–2	275.206(4)–2	3235–0241
Rule 206(4)–3	275.206(4)–3	3235–0242
Rule 206(4)–4	275.206(4)–4	3235–0345
Form ADV	279.1	3235–0049
Schedule I to Form ADV	279.1	3235–0490
Form ADV–W	279.2	3235–0313
Form ADV–H	379.3	3235–0538
Form 4–R	279.4	3235–0240
Form 5–R	279.5	3235–0240
Form 6–R	279.6	3235–0240
Form 7–R	279.7	3235–0240
Form ADV–E	279.8	3235–0361

Dated: March 20, 2002.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 02–7287 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–035]

Drawbridge Operation Regulations: Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Brightman Street Bridge, mile 1.8, across the Taunton River between Somerset and Fall River, Massachusetts. This deviation from the regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the bridge to remain in the closed position for vessel traffic to facilitate scheduled maintenance at the bridge.

DATES: This deviation is effective from April 5, 2002 through April 19, 2002.

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

SUPPLEMENTARY INFORMATION: The bridge owner, Massachusetts Highway Department, requested a temporary deviation from the drawbridge operating regulations to facilitate necessary structural repairs at the bridge, replacement of the main floor beam, at the bridge.

This deviation to the operating regulations, effective from 9 p.m. on April 5, 2002 through 4 p.m. on April 19, 2002, allows the Brightman Street Bridge to remain in the closed position for vessel traffic. There have been few requests to open this bridge during the requested time period scheduled for these structural repairs in past years. The Coast Guard and the bridge owner coordinated this closure with the facilities upstream from the bridge and no objections to this scheduled closure were received.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

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

[FR Doc. 02–7357 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–030]

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations that govern the NJTRO HX Railroad Bridge, mile 7.7, across the Hackensack River at Secaucus, New Jersey. This deviation from the regulations, effective from April 6, 2002 through April 28, 2002, allows the bridge to remain in the closed position on four weekends to facilitate scheduled maintenance repairs at the bridge.

DATES: This deviation is effective from April 6, 2002 through April 28, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The existing drawbridge operating regulations are listed at 33 CFR 117.723.

The owner of the bridge, the New Jersey Transit, requested a temporary deviation from the drawbridge operating regulations that govern their NJTRO HX

Bridge, at mile 7.7, across the Hackensack River in Secaucus, New Jersey, to facilitate necessary structural repairs at the bridge.

This deviation to the operating regulations allows the NJTRO HX Bridge to remain in the closed position every weekend in April, from 6 a.m. on Saturday through 6 p.m. on Sunday. The effective dates are as follows: April 6–7, 13–14, 20–21, 27–28, 2002. The Coast Guard coordinated this closure with the mariners that normally use this waterway to help select the best effective dates this temporary deviation will be in effect.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: March 19, 2002.

G.N. Naccara,

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

[FR Doc. 02–7358 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–004]

RIN 2115–AA97

Security Zone; Operation Native Atlas 2002, Waters Adjacent to Camp Pendleton, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to Camp Pendleton, California. This action is taken at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP) San Diego, or his designated representative.

In addition, the U.S. Navy will be installing 1260 feet of elevated causeway pier (ELCAS) at Red Beach, and conducting Offshore Petroleum Discharge System (OPDS) operations offshore from Red Beach. Both operations present a significant hazard to vessel's transiting within the zone.

DATES: This rule is effective from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PDT) on April 15, 2002.

ADDRESSES: Any comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 02–004, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard recently issued a similar temporary final rule under docket COTP San Diego 02–001, and published that rule in the **Federal Register** on February 22, 2002 (67 FR 8197). Also on February 22, 2002, because the exercise was postponed, the Captain of the Port ceased enforcement of that security zone and announced that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

This rulemaking action was taken at the request of the United States Navy and is considered necessary to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. This temporary security zone is necessary for protection of the public from the hazards of upcoming Naval operations in support of Operation Native Atlas 2002 in the area and for the protection of the operations from compromise and interference.

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Due to the complex planning, national security reasons, and the coordination involved with Naval scheduling, final details for the Operation Native Atlas 2002 were not provided to the Coast Guard in time to draft and publish a NPRM or a final rule 30 days in advance of its effective date. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of the Naval vessels, their crew and national security.

Furthermore, in order to protect the interests of national security, the Coast Guard is promulgating this temporary regulation to provide for the safety and security of U.S. Naval vessels in the navigable waters of the United States. As a result, the establishment and enforcement of this security zone is a function directly involved in, and necessary to military operations. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Background and Purpose

United States Navy officials have requested that the Captain of the Port, San Diego, California establish a temporary security zone in the area of Camp Pendleton, California. This request was made to improve security of Naval facilities and operations at this location and to protect the public from hazardous operations. Several hazardous or classified Naval operations, including activities related to Operation Native Atlas 2002 will be conducted near this location that are vital to national security and require protection of the public or protection of the operation from compromise and interference. The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States.

This security zone is necessary to provide for the safety and security of the United States of America. This security zone, prohibiting all vessel traffic from entering, transiting or anchoring within the areas defined by the security zone, is necessary for the security and protection of national assets. U.S. Navy personnel and U.S. Coast Guard vessels will enforce this zone.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

This security zone is established pursuant to the authority of The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel, a monetary penalty of not more than $10,000, and imprisonment for not more than 10 years.

Regulatory Evaluation

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

Due to national security interests, the implementation of this security zone is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because these security zones are only closing small portions of the navigable waters adjacent to Camp Pendleton, California. In addition, there are no small entities shoreward of the security zone. For these reasons, and the ones discussed in the previous section, the Coast Guard certifies, under 5 U.S.C. 605(b), that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lt Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34), of Commandant Instruction M16475.lD, this rule, which establishes a security zone, is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection

or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–036 to read as follows:

§ 165.T11–036 Security Zone: Waters Adjacent to Camp Pendleton, California

(a) *Location.* The following area is a security zone: All waters and shoreline areas within the following boundaries: A point on the shore at 33°–15′30″ N, 117°–26′14″– W (Point A); proceeding westward to 33°–15′24″ N, 117°–30′45″ W (Point B); then north westward to 33°–18′30″ N, 117°32′55″ W (Point C); then eastward to the shore at 33°–18′42″ N, 117°–29′00″ W (Point D); thence along the shoreline to the point of beginning.

(b) *Effective dates.* This security zone will be in effect from 12:01 a.m. (PDT) on March 22, 2002, to 11:59 p.m. (PST) on April 15, 2002. If the need for this security zone ends before the scheduled termination time and date, the Captain of the Port will cease enforcement of the security zones and will also announce that fact via Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary regulation, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary regulation. Mariners requesting permission to transit through the security zones must request authorization to do so from the Captain of the Port, who may be contacted at (619) 683–6495, or U.S. Navy Force Security Officer (FSO), who may be reached during normal working hours at (619) 437–9828. After normal working hours the FSO can be reached at (619) 437–9480.

(d) The U.S. Navy may assist the U.S. Coast Guard in the patrol and enforcement of this security zone.

Dated: March 15, 2002.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 02–7355 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG 1999–6094]

RIN 2115–AF87

Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard removes a suspended provision, which would have required the public to report collisions of recreational vessels involving two or more vessels, regardless of the amount of damage to property. This removal streamlines reporting criteria and reduces paperwork burdens on the public, the States, and the Coast Guard, for accidents causing minor or cosmetic damage. The remaining provision, which requires the public to report damage to vessels and other property when it totals $2,000 or more or there is a complete loss of any vessel, is in effect as published.

DATES: Effective March 27, 2002.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG 1999–6094 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Bruce Schmidt, Project Manager, Office of Boating Safety, Program Management Division, Coast Guard, by e-mail at *bschmidt@comdt.uscg.mil* or by telephone at 202–267–0955.

If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

You may obtain a copy of this rule by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or by accessing either the Web Site for the Office of Boating Safety, at *http://www.uscgboating.org,* or the Internet Site for the Docket Management Facility, at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

The National Association of State Boating Law Administrators (NASBLA) is a professional association whose members include officials of States, commonwealths, and provinces. These officials are responsible for administering and enforcing the boating laws of their jurisdictions. The Boating Accident Investigation, Reporting, and Analysis Committee (BAIRAC) is a subcommittee of NASBLA and is responsible for the reporting and analysis of accidents.

The Boating Law Administrators (BLAs) who serve on BAIRAC are experts in enforcement, education for boating safety, and investigation of boating accidents. Through their experience with and knowledge of various types of boat damage and subsequent repair costs, they strongly encouraged the Coast Guard to raise the threshold of property damage for reports of accidents involving recreational vessels to a level that reflects current prices of boats and costs of repair.

BAIRAC asked the Coast Guard to initiate a rulemaking that would change the threshold for reports of accidents involving only property damage from $500 to $2,000 and would amend the reportable conditions to include all accidents involving collisions of multiple vessels. While the Coast Guard concurred that a threshold of $2,000 for those accidents involving only property damage would enable States' accident investigators to focus on reports of safety-related damage and eliminate most of the reports of cosmetic damage, we needed to study the feasibility of requiring the reports of all multi-vessel accidents.

Data within the Boating Accident Report Database (BARD) for 1998 show that 1,718 reported multi-boat collisions involved only property damage. Of those 1,718, 1,002 involved property damage below the proposed threshold of $2,000. Taking a closer look at the data, we discovered that nearly 90% of those 1,002 involve property damage at or below a threshold of $1,500. We considered most of these more cosmetic than safety-related. So, recognizing the

need to reduce the number of reports for minor or cosmetic damage, the need to reduce the administrative burden on the public and the States of reports for such damage, and the need for States' accident investigators to focus on safety-related damage, we did not mandate reports of all multi-boat collisions at that time.

After we published our Notice of Proposed Rulemaking (NPRM), we received five comments that urged us to include a provision that required reports of all multi-vessel collisions because most of these accidents are caused by boat operators who violate navigation rules. As first written, our Final Rule would have raised the reporting threshold to $2000, yet also have required that all multi-vessel accidents must be reported; however, shortly after the publication date, though before the effective date of the Rule, we received a comment that recommended that we suspend the provision to require reports of multi-vessel collisions. The commenter indicated that his State could not comply with the Rule because his State did not require such reports, nor could the legislature in his State meet before the effective date of the Rule. (All States currently require owners or operators to report accidents costing $500 or more; however, few States require them to report all accidents. To change this, each State's legislature would have to vote to require reports of all multi-vessel accidents.) While the portion of the Rule that raised the threshold went into effect as planned, we suspended the multi-vessel provision and requested comments. On the basis of the feedback we received from that Notice of Suspension, we are removing the suspended provision.

This Rule will raise the threshold of property damage for reports of accidents involving recreational vessels (including multi-vessel accidents) from the current level of $500 to $2000. This higher threshold will reduce the numbers of reports of accidents involving minor or cosmetic damage and reduce the burden of paperwork on the boating public, the States, and the Coast Guard itself.

Regulatory History

We published an NPRM [65 FR 38229 (June 20, 2000)]. In it, we proposed to raise the threshold of reporting accidents from $500 to $2000. To it, we received seventeen comments. Twelve of them supported raising the threshold of property damage to $2,000; five of those twelve also supported requiring the reporting of all accidents involving collisions of two or more vessels, regardless of the amount of property damage. The five not among the twelve opposed raising the threshold of property damage at all.

We decided to move forward with our plan to raise the reporting threshold to $2000. On the basis of comments submitted by NASBLA and BAIRAC, we also planned on requiring reports of all accidents involving collisions of two or more vessels, regardless of the amount of property damage, because boat operators who violate a navigation rule cause most of these accidents. We published a Final Rule to codify these plans [66 FR 21671 (May 1, 2001)].

Shortly after publication of the Final Rule, we received a comment that indicated that many States would be unable to comply with the requirement to report all multi-vessel accidents, because few States have such a requirement in their books, few States have statutory authority to require such reports, and many States' legislative calendars preclude compliance by the published effective date, July 2, 2001.

In response to this comment, we suspended the provision that required the reporting of all multi-vessel accidents, and we requested further comments [66 FR 33844 (June 26, 2001)]. We reopened the comment period to accommodate a request by NASBLA, so they could meet as a body and forward their official comment to us [66 FR 53754 (October 24, 2001)]. On the basis of the comments we received, we are removing the provision we suspended, which would have required the reporting of all multi-vessel accidents; and, though it is already in effect, we are finalizing the remainder of the rule: report damage to vessels and other property that totals $2,000 or more and report the complete loss of any vessel.

Discussion of Comments and Changes

We received a total of nine comments to our Partial Suspension of Rule; Request for Comments. One comment was submitted to this docket in error; another requested that we reopen the comment period; therefore, we analyzed a total of seven comments.

While all commenters were concerned with either safety, reporting efficiency, or both, their approaches to achieve these goals varied. Three commenters indicated that they do not favor removing 33 CFR 173.55(a)(3)(ii), that is, they prefer requiring reports on all multi-vessel accidents, regardless of cost. One of these three indicated willingness to compromise by keeping the reporting threshold for multi-vessel accidents at $500.

Two of the three comments in favor of requiring reports of all multi-vessel accidents, regardless of the amount of damage to property, came from State Boating Law Administrators (BLAs). One indicated that suspending the effective date for a year would be acceptable in giving the States time to gain statutory authority to require reports of multi-vessel accidents. The second was concerned that many multi-vessel accidents involving smaller boats would go unreported. The third thought that, without reports of these accidents, it would be difficult to determine whether a safety problem exists. After thoughtfully considering the three comments, the Coast Guard decided that the prospect of all States' getting statutory authority to uniformly require reports of multi-vessel accidents is not realistic either from a logistical or from a legislative perspective.

Two BLA commenters indicated that they do favor removing the provision, because their States would not have the statutory authority to require reports of all multi-vessel accidents. These two indicated that changing their States' laws to eliminate the value of property damage for multi-vessel accidents would be difficult and time-consuming. They recommend keeping the reporting threshold for multi-vessel accidents at $500 since all States maintain at least a $500 reporting threshold and, therefore, legislation would be unnecessary for reporting multi-vessel accidents at that level. After thoughtfully considering these two comments, the Coast Guard decided that a uniform threshold of $2,000 for reports of property damage that includes multi-vessel accidents would be better understood by those individuals required to file accident reports.

Another commenter favored removing the provision out of concern for our workload.

We agree that the requirement to report multi-vessel accidents would create an undue burden for those required to process all reports of multi-vessel accidents in each State.

NASBLA wrote to the docket and requested that we reopen the comment period so they could discuss this rulemaking at their next scheduled meeting. We did to accommodate their request. NASBLA (whose subcommittee, BAIRAC, had recommended that the Coast Guard raise the reporting threshold in the first place) indicated that a majority of their members voted to recommend removing the provision and to uniformly report all accidents with $2,000 or more in property damage including two-vessel collisions. On the basis of the comments we received, especially that of NASBLA, which represents boating authorities of all 50 States and the U.S. Territories, we are

removing the provision that requires all multi-vessel collisions to be reported. Therefore, as previously published in the Final Rule, regardless of whether multiple vessels are involved, an accident report is required only when damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel.

While the threshold of $2,000 for reports of accidents with only property damage now becomes the minimum set by Federal rule, States remain free to impose stricter requirements. Thus, a State could require reports of accidents involving collisions of multiple vessels, even if they resulted only in property damage below the threshold of $2,000.

Also note that, if, after an accident, a vessel valued at less than $2000 is a complete loss, that too must be reported. The Coast Guard will continue to collect, analyze, and report data so that, together with the States, industry, and public, we can enhance the safety of recreational boating.

List of Subjects in 33 CFR Part 173

Marine safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 173 as follows:

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

Subpart C—Casualty and Accident Reporting

1. The citation of authority for part 173 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

§ 173.55 [Amended]

2. Revise § 173.55(a)(3) to read as follows:

§ 173.55 Report of casualty or accident.

(a) * * *

(3) Damage to vessels and other property totals $2,000 or more or there is a complete loss of any vessel;

* * * * *

Dated: March 20, 2002.

Kenneth T. Venuto,

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

[FR Doc. 02–7235 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG–2000–8589]

RIN 2115–AG04

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

AGENCY: Coast Guard, DOT.

ACTION: Final rule; notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing the Final Rule on the wearing of PFDs by certain children aboard recreational vessels. It needs to reconsider the extent, if any, to which its rule should supersede States' rules that are compatible in most respects, but that are divergent in some. It hopes to save children's lives on the water and yet accord our system of federalism ''full faith and credit.''

DATES: This final rule amending 33 CFR part 175 published on February 27, 2002 [67 FR 8881] is withdrawn as of March 27, 2002.

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

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

SUPPLEMENTARY INFORMATION:

Regulatory History

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

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

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

We published a final rule in the **Federal Register** on February 27, 2002 [67 FR 8881] establishing two Federal requirements. The first was for children under 13 aboard recreational vessels to wear PFDs, while the children are on deck and their vessels are underway. The second adopted any age requirement enacted or adopted by a State age requirement as the Federal age requirement, within the States. The rule did not formally address the various limits such as those related to length of vessel, by which some States qualified the applicability of their age requirements. We did not consider these differences between Federal and State requirements, according to vessel length, to be a problem. The rule would have been effective on March 29, 2002.

Withdrawal

After the rule was published, a State's Boating Law Administrator alerted us to potential enforcement problems resulting from these differences. At the same time, as we prepared guidance for our boarding officers on the fine points of enforcement, we observed the same potential enforcement problems with the differences. We decided that we needed to withdraw the Final Rule as it stood and fix it.

Therefore, we are withdrawing the final rule [67 FR 8881] and are revising some of its provisions. We are determining how to resolve the differences between Federal and State requirements and will notify the public and publish our decision in the **Federal Register**.

Again, we need to reconsider the extent, if any, to which our rule should supersede States' rules that are compatible in most respects but that are divergent in some, such as vessel length. We will do this in candor because we are dedicated to maintaining the public trust.

Meanwhile, we ask parents to ensure that children under 13 wear Coast

Guard approved lifejackets while the children are on deck and their vessels are under way. Children's safety is the ultimate objective and the delay of the rule should not stand in the way of sound judgment.

Dated: March 20 2002.

Kenneth T. Venuto,

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

[FR Doc. 02–7236 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[Alaska 001; FRL–7158–2]

Outer Continental Shelf Air Regulations; Consistency Update for Alaska

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Final rule.

SUMMARY: EPA is updating the Outer Continental Shelf (''OCS'') Air Regulations as they apply to OCS sources off the coast of Alaska. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of incorporating the State of Alaska requirements applicable to OCS sources in effect as of July 2, 2000, is to regulate emissions from OCS sources consistent with the requirements onshore.

EFFECTIVE DATE: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 26, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle WA 98101, Telephone: (206) 553–4150.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2001, the EPA published a direct final rule (66 FR 12982), and an accompanying proposed rule (66 FR 12986) updating the OCS Air Regulations as they apply to OCS sources off the coast of Alaska. In the direct final rule, EPA indicated that if adverse comment was received, EPA would publish a withdrawal of the direct final rule in the **Federal Register**. On March 9, 2001, EPA received adverse comments from the International Association of Drilling Contractors (Association). Accordingly on October 23, 2001, EPA removed the amendment made by that final rule due to the adverse public comments received and reinstated the previous regulatory text (66 FR 53533). In this action, EPA is summarizing and responding to the comments while also finalizing the amendments as previously proposed on March 1, 2001.

Response to Comments

On March 1, 2001, the EPA proposed to incorporate the State of Alaska requirements that are applicable to OCS sources, July 2, 2000, into 40 CFR part 55. The State of Alaska requirements applicable to OCS sources included the State of Alaska's revised marine vessel visible emission standards, 18 AAC 50.070, effective June 21, 1998. The standards limit visible emissions from marine vessels within three miles of the Alaska coastline. Note, the State of Alaska's seaward boundary extends out three miles from its coastline. Alaska's jurisdiction does not extend beyond this three mile limit. When EPA proposed to incorporate into 40 CFR part 55 the marine vessel emission standards in the State of Alaska requirements applicable to OCS sources, EPA intended for the standards to apply outside the seaward boundary of the State of Alaska despite the fact that 18 AAC 50.070, on its face, applies only to marine vessel visible emissions within Alaska's seaward boundary. 18 AAC 50.070, provides in part that ''visible emissions, excluding condensed water vapor, may not reduce visibility through the exhaust effluent of a marine vessel by more than 20 percent. * * *''

EPA received adverse comments from the Association regarding the applicability of the marine vessel visible emission standards, 18 AAC 50.070, to activity on the OCS. The Association believes that 18 AAC 50.070 should be excluded from 40 CFR part 55 because the emission standards, as written, apply only to vessels within three miles of the Alaska coastline. The Association also commented that the 18 AAC 50.070 should not be incorporated into 40 CFR part 55 for the same reasons that 18 AAC 50.300(g) and (h)(11) are excluded. In response to the Association's comments, EPA is providing the rationale to support the incorporation of 18 AAC 50.070 into 40 CFR part 55.

Pursuant to section 328(a)(1) of the Clean Air Act, EPA shall establish requirements to control air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act. Such requirements shall be the same as would be applicable if the source were located in the COA. The marine vessel visible emission standards are rationally related to the attainment and maintenance of Federal and State ambient air quality standards for particulate matter and part C of title I of the Act. Visible emissions from marine vessels consist, in part, of particulate matter. Limiting these visible emissions also limits particulate matter emissions, thus assisting in the protection of the particulate matter ambient air quality standards and the prevention of significant air quality deterioration. The marine vessel visible emission standards are not designed expressly to prevent exploration and development of the OCS as evidenced by the fact that the same standards apply to exploration and development projects in Alaskan waters. It is appropriate that the marine vessel visible emission standards are applied to OCS sources because marine vessels are capable of generating visible emissions and the vessels operate on the OCS; thus, the vessels should be subject to requirements that are ''the same as'' the requirements that apply within three miles of the Alaska coastline. In response to the second part of the Association's comments, the visible emission requirements in 18 AAC 50.070 are very different from the requirements of 18 AAC 50.300(g) and (h)(11). By their terms, 18 AAC 50.300(g) and (h)(11) apply only to Anchorage. Thus, contrary to the Association's comment, the rationale for excluding 18 AAC 50.300(g) and (h)(11) is not applicable to 18 AAC 50.070 and provides no basis for excluding 18 AAC 50.070 from 40 CFR part 55. Lastly, the marine vessel emission standards are not arbitrary or capricious and EPA's incorporation of these standards into 40 CFR part 55 is not arbitrary or capricious as evidenced by the reasoning provided above.

EPA has evaluated the COA requirements to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

EPA Action

In this document, EPA takes final action under section 328(a)(1) of the Act, 42 U.S.C. 7627, to incorporate the State of Alaska requirements applicable to OCS sources, July 2, 2000, into 40 CFR part 55. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13175

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act),'' signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective April 26, 2002.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. 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 May 28, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 6, 2002.

L. John Iani,

Regional Administrator, Region 10.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(A) State of Alaska Requirements Applicable to OCS Sources, July 2, 2000.

* * * * *

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading ''Alaska'' to read as follows:

APPENDIX A TO 40 CFR PART 55—LISTING OF STATE AND LOCAL REQUIREMENTS INCORPORATED BY REFERENCE INTO PART 55, BY STATE

* * * * *

Alaska

(a) * * *

(1) The following State of Alaska requirements are applicable to OCS Sources, July 2, 2000. Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management

18 AAC 50.005. Purpose and Applicability of Chapter. (effective 1/18/1997)
18 AAC 50.010. Ambient Air Quality Standards. (effective 6/21/1998)
18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions. (effective 1/18/1997)
Table 1. Air Quality Classifications
18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations. (effective 6/21/1998)
Table 2. Baseline Dates
Table 3. Maximum Allowable Increases
18 AAC 50.025. Visibility and Other Special Protection Areas. (effective 1/18/1997)
(a) [untitled]
18 AAC 50.030. State Air Quality Control Plan. (effective 9/04/1998)
18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference. (effective 7/02/2000)
18 AAC 50.045. Prohibitions. (effective 1/18/1997)
18 AAC 50.050. Incinerator Emission Standards. (effective 1/18/1997)
Table 4. Particulate Matter Standards for Incinerators
18 AAC 50.055. Industrial Processes and Fuel-burning Equipment. (effective 11/04/1999)
18 AAC 50.065. Open Burning. (effective 1/18/1997)
(a) General Requirements.
(b) Black Smoke Prohibited.
(c) Toxic and Acid Gases and Particulate Matter Prohibited.
(d) Adverse Effects Prohibited.
(e) Air Quality Advisory.
(i) Firefighter Training: Fuel Burning.
(j) Public Notice.
(k) Complaints.
18 AAC 50.070. Marine Vessel Visible Emission Standards. (effective 6/21/1998)
18 AAC 50.080. Ice Fog Standards. (effective 1/18/1997)
18 AAC 50.100. Nonroad engines. (effective 1/18/1997)
18 AAC 50.110. Air Pollution Prohibited. (effective 5/26/1972)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation. (effective 1/18/1997)
18 AAC 50.205. Certification. (effective 1/18/1997)
18 AAC 50.210. Potential to Emit. (effective 1/18/1997)
18 AAC 50.215. Ambient Air Quality Analysis Methods. (effective 6/21/1998)
18 AAC 50.220. Enforceable Test Methods. (effective 1/18/1997)
18 AAC 50.225. Owner-requested Limits. (effective 6/21/1998)
18 AAC 50.230. Preapproved Limits. (effective 6/21/1998)
18 AAC 50.235. Unavoidable Emergencies and Malfunctions. (effective 6/14/1998)
18 AAC 50.240. Excess Emissions. (effective 1/18/1997)

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18 AAC 50.300. Construction Permits: Classifications. (effective 6/21/1998)
(a) [untitled]
(b) Ambient Air Quality Facilities.
(c) Prevention of Significant Deterioration Major Facilities.
(d) Nonattainment Major Facilities.
(e) Major Facility Near a Nonattainment Area.
(f) Hazardous Air Contaminant Major Facilities.
(h) Modifications. (paragraphs 1 through 10)
18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator. (effective 1/18/97)

18 AAC 50.310. Construction Permits: Application. (effective 1/18/1997)
(a) Application Required.
(b) Operating Permit Coordination.
(c) General Information.
(d) Prevention of Significant Deterioration Information. Table 6. Significant Concentrations
(e) Excluded Ambient Air Monitoring.
(f) Nonattainment Information.
(g) Demonstration Required Near A Nonattainment Area.
(h) Hazardous Air Contaminant Information.
(j) Nonattainment Air Contaminant Reductions.
(k) Revising Permit Terms.
(l) Requested Limits.
(m) Stack Injection.
(n) Ambient Air Quality Information.
18 AAC 50.320. Construction Permits: Content and Duration. (effective 1/18/1997)
18 AAC 50.325. Operating Permits: Classifications. (effective 6/21/1998)
18 AAC 50.330. Operating Permits: Exemptions. (effective 1/18/1997)
18 AAC 50.335. Operating Permits: Application. (effective 6/21/1998)
(a) Application Required.
(b) Identification.
(c) General Emission Information.
(d) Fees.
(e) Regulated Source Information.
(f) Facility-wide Information: Ambient Air Quality.
(g) Facility-wide Information: Owner Requested Limits.
(h) Facility-wide Information: Emissions Trading.
(i) Compliance Information.
(j) Proposed Terms and Conditions.
(k) Compliance Certifications.
(l) Permit Shield.
(m) Supporting Documentation.
(n) Additional Information.
(o) Certification of Accuracy and Completeness.
(p) Renewals.
(q) Insignificant Sources.
(r) Insignificant Sources: Emission Rate Basis.
(s) Insignificant Sources: Category Basis.
(t) Insignificance Sources: Size or Production Rate Basis.
(u) Insignificant Sources: Case-by-Case Basis.
(v) Administratively Insignificant Sources.
18 AAC 50.340. Operating Permits: Review and Issuance. (effective 1/18/1997)
(a) Review of Completeness.
(b) Evaluation of Complete Applications.
(c) Expiration of Application Shield.
18 AAC 50.341. Operating Permits: Reopenings. (paragraphs a, b, c, f, and g)(effective 6/14/1998)
18 AAC 50.345. Operating Permits: Standard Conditions. (effective 6/21/1998)
18 AAC 50.350. Operating Permits: Content. (effective 6/21/1998)
(a) Purpose of Section
(b) Standard Requirements.
(c) Fee Information.
(d) Source-Specific Permit Requirements.
(e) Facility-Wide Permit Requirements.
(f) Other Requirements.
(g) Monitoring Requirements.
(h) Records.
(i) Reporting Requirements.
(j) Compliance Certification.
(k) Compliance Plan and Schedule.
(l) Permit Shield.
(m) Insignificant Sources.
18 AAC 50.355. Changes to a Permitted Facility. (effective 1/18/1997)
18 AAC 50.360. Facility Changes that Violate a Permit Condition. (effective 1/18/1997)
18 AAC 50.365. Facility Changes that do not Violate a Permit Condition. (effective 6/14/1998)
18 AAC 50.370. Administrative Revisions. (effective 6/14/1998)
18 AAC 50.375. Minor and Significant Permit Revisions. (effective 6/21/1998)
18 AAC 50.380. General Operating Permits. (effective 6/14/1998)
18 AAC 50.385. Permit-by-rule for Certain Small Storage Tanks. (effective 6/21/1998)

Article 5. User Fees

18 AAC 50.400. Permit Administration Fees. (effective 6/21/1998)
18 AAC 50.410. Emission Fees. (effective 1/18/1997)
18 AAC 50.420. Billing Procedures. (effective 1/18/1997)

Article 9. General Provisions

18 AAC 50.910. Establishing Level of Actual Emissions. (effective 1/18/1997)
18 AAC 50.990. Definitions. (effective 1/01/2000)

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301225; FRL–6829–3]

RIN 2070–AB78

Acetamiprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues ofacetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on citrus dried pulp, citrus fruit group, cotton gin byproducts, cotton undelinted seed, grape, fruiting vegetable group, leafy brassica vegetable group, leafy vegetable (except brassica) group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; poultry eggs,fat, liver, and meat. Aventis CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective March 27, 2002. Objections and requests for hearings, identified by docket control number OPP–301225, must be received on or before May 28, 2002.

ADDRESSES: Written objections and hearing requests may besubmitted 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–301225 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Akiva Abramovitch, Registration Division (7505C), Office of Pesticide Programs, EnvironmentalProtection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–8328; e-mail address: abramovitch.akiva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select ''Laws and Regulations'', ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301225. 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 May 30, 2001 (66 FR 29213)(FRL–6782–9), 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 0F06082) by Aventis CropScience (formerly Rhone-Poulenc Ag Company), P.O. Box 12014, #2 T.W. Alexander Drive, Research Triangle Park, NC 207709. This notice included a summary of the petition prepared by Aventis CropScience, 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 tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on brassica (cole crops) at 1.2 parts per million (ppm), canola seed and mustard seed at 0.01 ppm, citrus at 0.5 ppm, cottonseed at 0.06 ppm, fruiting vegetables at 0.2 ppm, grapes at 0.2 ppm, leafy vegetables at 3.0 ppm, and pome fruits at 0.70 ppm. The Agency will not address the canola seed and mustard seed tolerances at this time.

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 tolerances for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]- N2-cyano-N1-methylacetamidine in or on citrus fruit group at 0.50 ppm, citrus dried pulp and leafy brassica vegetable group at 1.20 ppm each, cotton gin byproducts at 20.0 ppm, cotton undelinted seed at 0.60 ppm, leafy vegetable group (except brassica) at 3.0 ppm, fruiting vegetable group and grape at 0.20 ppm each, pome fruit group at 1.0 ppm, and tomato paste at 0.40 ppm; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat and fat of cattle, hog, horse, goat, and sheep at 0.10 ppm each; meat byproducts of cattle, hog, horse, goat, and sheep at 0.20 ppm each; milk at 0.10 ppm; poultry eggs, meat and fat at 0.010 ppm each; and poultry liver at 0.050 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 acetamiprid 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.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Rat	NOAEL: 12.4/14.6 mg/kg/day - Male/Female (M/F) LOAEL: 50.8/56.0 mg/kg/day (M/F) based on decreased Body Weight (BW), BW gain and food consumption.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	13–Week Feeding - Mouse	NOAEL: 106.1/129.4 mg/kg/day (M/F) LOAEL: 211.1/249.1 mg/kg/day (M/F) based on reduced BW and BW gain, decreased glucose and cholesterol levels, reduced absolute organ weights.
870.3150	90–Day oral toxicity in nonrodents	NOAEL: 13/14 mg/kg/day (M/F) LOAEL: 32 mg/kg/day based on reduced BW gain in both sexes.
870.3200	21–Day dermal toxicity - rabbit	NOAEL: 1,000 mg/kg/day - Highest Dose Tested (HDT) LOAEL: >1,000 mg/kg/day
870.3700	Prenatal developmental in rodents	Maternal NOAEL: 16 mg/kg/day Maternal LOAEL: 50 mg/kg/day based on reduced BW and BW gain and foodconsumption, increased liver weights. Developmental NOAEL: 16 mg/kg/day Developmental LOAEL: 50 mg/kg/day based on increased incidence of shortening of the 13th rib.
870.3700	Prenatal developmental in nonrodents	Maternal NOAEL: 15 mg/kg/day Maternal LOAEL: 30mg/kg/day based on BW loss and decreased food consumption. Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: > 30 mg/kg/day
870.3800	Reproduction and fertility effects	Parental systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Parental systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on decreased BW, BW gain and food consumption. Offspring systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Offspring systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in pup weight, litter size, viability and weaning indices; delay in age to attain preputial separation and vaginal opening. Reproductive NOAEL: 17.9/21.7 mg/kg/day (M/F) Reproductive LOAEL: 51.0/60.1 mg/kg/day (M/F) based on reductions in litter weights and individual pup weights on day of delivery.
870.4100	Chronic toxicity dogs	NOAEL: 20/21 mg/kg/day (M/F) LOAEL: 55/61 mg/kg/day (M/F) based on initial BW loss and overall reduction in BW gain.
870.4100/870.4200	Chronic toxicity/Carcinogenicity - rats	NOAEL: 7.1/8.8 mg/kg/day (M/F) LOAEL: 17.5/22.6 mg/kg/day (M/F) based on decreases in mean BW and BW gain (F) and hepatocellular vacuolation (M) Evidence of treatment-related increase in mammary tumors.
870.4300	Carcinogenicity mice	NOAEL: 20.3/75.9 mg/kg/day (M/F) LOAEL: 65.6/214.6 mg/kg/day (M/F) based on decreased BW and BW gain andamyloidosis in numerous organs (M) and decreased BW and BW gain (F). Not oncogenic under conditions of study.
870.5100	Reverse gene mutation assay	*Salmonella typhimurium/E. coli* - Not mutagenic under the conditions of the study.
870.5300	Mammalian cells in cultureForward gene mutation assay - CHO cells	Not mutagenic under the conditions of the study.
870.5375	*In vitro* mammalian chromosomal aberrations - CHO cells	Acetamiprid is a clastogen under the conditions of the study.
870.5385	*In vivo* mammalian chromosome aberrations - rat bone marrow	Acetamiprid did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenetics - micronucleus assay in mice	Acetamiprid is not a clastogen in the mouse bone marrow micronucleus test.
870.5550	UDS assay in primary rat hepatocytes/ mammalian cell culture	Acetamiprid tested negatively for UDS in mammalian hepatocytes *in vivo*.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.6200	Acute neurotoxicity - rat	NOAEL: 10 mg/kg LOAEL: 30 mg/kg based on reduction in locomotor activity.
870.6200	Subchronic neurotoxicity - rat	NOAEL: 14.8/16.3 mg/kg/day (M/F) LOAEL: 59.7/67.6 mg/kg/day (M/F) based on reductions in BW, BW gain, foodconsumption and food efficiency.
N/A	28–day feeding - dog	NOAEL: 16.7/19.1 mg/kg/day (M/F) LOAEL: 28.0/35.8 mg/kg/day based on reduced BW gain.
870.7485	Metabolism - mouse, rat, rabbit Special Study	Male mice, rats or rabbits were administered single doses of acetamiprid by gavage, intraperitoneal injection (i.p.) or intravenous injection (i.v.) up to 60 mg/kg. The animals were assessed for a variety of neurobehavioral parameters. In vitro experiments were also done using isolated ileum sections from guinea pigs to assess contractile responses in the absence and presence of agonists (acetylcholine, histamine diphosphate, barium chloride and nicotine tartrate). Acetamiprid was also assessed via i.v. in rabbits for effects on respiratory rate, heart rate and blood pressure; via gavage in mice for effects on gastrointestinal motility; and via i.p. in rats for effects on water and electrolyte balance in urine, and blood coagulation, hemolytic potential and plasma cholinesterase activity. Based on a number of neuromuscular, behavioral and physiological effects of acetamiprid in male mice, under the conditions of this study, a overall NOAEL of 10 mg/kg (threshold) and LOAEL of 20 mg/kg could be estimated for a single dose by various exposure routes.
870.7485	Metabolism and pharmacokinetics - rat	Extensively and rapidly metabolized. Metabolites 79–86% of administered dose. Profiles similar for males and females for both oral and intravenous dosing. Thirty-seven percent of dose recovered in urine and feces as unchanged test article. Urinary and fecal metabolites from 15–day repeat dose experiment only showed minor differences from single-dose test. Initial Phase I biotransformation: demethylation of parent. 6-chloronicotinicacid most prevalent metabolite. Phase II metabolism shown by increase in glycine conjugate.
870.7600	Dermal absorption	The majority of the dose was washed off with the percent increasing with dose. Skin residue was the next largest portion of the dose with the percent decreasing with dose. In neither case was there evidence of an exposure related pattern. Absorption was small and increased with duration of expure. Since there are no data to demonstrate that the residues remaining on the skin do not enter the animal, then as a conservative estimate of dermal absorption, residues remaining on the skin will be added to the highest dermal absorption value. The potential total absorption at 24 hours could be approximately 30%.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from thetoxicology 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 intra species 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 acetamiprid used for human risk

assessment is shown in the following Table 2:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACETAMIPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietarygeneral population including infants and children	NOAEL = 10 mg/kg UF = 100 ..... Acute RfD = 0.10 mg/kg/day	FQPA SF = 1 aPAD = 0.10 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 30 mg/kg based on reduction in locomotor activity in males.
Chronic Dietary all populations	NOAEL= 7.1 mg/kg/day UF = 100 ..... Chronic RfD = 0.07 mg/kg/day .	FQPA SF = 3 cPAD = 0.023 mg/kg/day	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BW gain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Incidental Oral (1 to 30 days and 1 month to 6 months) (Residential)	NOAEL= 15 mg/kg/day	LOC for MOE = 300 (Residential)	Co-critical studies: subchronic oral (rat); subchronic neurotoxicity (rat) developmental toxicity (rat); LOAEL = 50 mg/kg/day based on reductions in BW, BW gain and food consumption.
Short- and Intermediate-TermDermal (1 to 30 days; and 1 month to 6 months) (Residential)	oral study NOAEL= 17.9 mg/kg/day (dermal absorption rate = 30%	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Dermal (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (dermal absorption rate = 30%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Short- and Intermediate-Term Inhalation (1 to 30 days and 1 month to 6 months)(Residential)	oral study NOAEL= 17.9 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	2-generation reproduction study (rat) LOAEL = 51.0 mg/kg/day based on reductions in pup weights in both generations, reductions in litter size and viability and weaning indices among F_2 offspring, significant delays in age to attain vaginal opening and preputial separation.
Long-Term Inhalation (6 months to lifetime) (Residential)	oral study NOAEL= 7.1 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational), 300 (Residential)	Chronic/carcinogenicity study in the rat LOAEL = 17.5 mg/kg/day based on reduced BW and BWgain (females) and hepatocellular vacuolation (males).
Cancer (oral, dermal, inhalation) - not likely to be carcinogenic.	.....	.....	

*The reference to the FQPA Safety Factor refers to any additional safety factor that is retained due to concerns unique to the FQPA. The PAD (Population-adjusted Dose) incorporates the FQPA Safety Factor into the dose for use in risk assessment: PAD = RfD/FQPA SF.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* No tolerances have been established for the residues of acetamiprid, in or on raw agricultural commodities and no tolerances have been established for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on meat, milk, poultry and egg commodities. Risk assessments were conducted by EPA to assess dietary exposures from acetamiprid 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 one 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: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in

lower exposure and risk estimates than those presented here. Even without such refinement, the acute dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Dietary (food only) exposure estimates were greatest for the population subgroup composed of children ages 1–6 years old. Acute exposure is estimated to be 0.039606 mg/kg (95th percentile of exposure), which is equal to 40% of the acute population-adjusted dose (aPAD). The results are summarized in the accute dietary exposureportion of Table 3.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment 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 chronic exposure assessments: The assessment assumed that 100% of the crops listed on the proposed label were treated and that crops listed on the label and livestock had residues of concern at the tolerance level. For processed commodities without a proposed tolerance, the analysis used the default processing factors provided with the model. A Tier 1 analysis results in highly conservative estimates of exposure and risk. Consideration of processing factors, anticipated residues in foods at the time of consumption, and percent of crop treated would result in lower exposure and risk estimates than those presented here. Even without such refinement the chronic dietary risk estimates are below the Agency's level of concern [i.e., <100% of the population-adjusted dose (PAD)] for all population subgroups. Chronic exposure is estimated to be 0.014687 mg/kg/day, which is equal to 64% of the cPAD. Although there is the potential for incidental ingestion of pesticide residues and soil from treated vegetables and foliage in home gardens via hand-to-mouth transfer, incidental oral exposure was not quantitatively assessed. Toddlers are not expected to spend a significant amount of time in a home garden and any resulting incidental oral exposures would be minimal and not quantifiable. Therefore, the Agency does not believe that incidental oral exposure from the requested homeowner uses will result in significant incidental oral exposures to children. The results are summarized in the chronic exposure portion of Table 3.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE AND CHRONIC EXPOSURE TO ACETAMIPRID

Population Subgroup	Acute		Chronic	
	95th percentile Exposure mg/kg	%aPAD	Exposure mg/kg/day	%cPAD
U.S. Population (total)	0.016921	17	0.005395	24
All Infants (<1 year old)	0.038317	38	0.010261	45
Children 1–6 years old	0.039606	40	0.014687	64
Children 7–12 years old	0.022084	22	0.008072	35
Females 13–50	0.011451	11	0.003970	17
Males 13–19	0.011627	12	0.004460	19
Males 20+ years	0.009624	10	0.003673	16
Seniors 55+	0.010242	10	0.004005	17

[1] %aPAD and %cPAD are exposures presented as percentages ofthe acute and chronic population-adjusted doses, respectively. For acetamiprid, the aPAD = 0.1 mg/kg; the cPAD = 0.023 mg/kg/day.

iii. *Cancer*. The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the historical control data from the same lab, it was within the range of values from the supplier.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for acetamiprid 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 acetamiprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, 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 %RfD or %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 acetamiprid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of acetamiprid for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 0.0008 ppb for ground water. The EECs for chronic exposures are estimated to be 4.0 ppb for surface water and 0.0008 ppb for ground water.

3. *From non-dietary exposure*. The term ''residentialexposure'' 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). Acetamiprid is proposed with this notice to be registered for use on the following residential non-dietary sites: ornamentals, flowers, vegetable gardens, and fruit trees. The risk assessment showed the following: for residential applicators, total MOEs for short- and intermediate-term residential dermal and inhalation exposures range from 1.2×10^5 to 6×10^5. For post-application activities, short- and intermediate-term MOEs range from 1.8×10^4 to 1.8 10^5 for adults and from 2.3×10^4 to 2.2×10^5 for youth ages 10–12 years. The residential uses for acetamiprid are not expected to result in long-term exposures.

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.

EEPA does not have, at this time, available data to determine whether acetamiprid 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, acetamiprid 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 acetamiprid 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. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is noquantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the developmental studies. In the rat, an increase in the incidence of shortening of the 13th rib was observed in fetuses at the same LOAEL as the dams, which exhibited reduced mean body weight, body weight gain and food consumption and increased liver weights. No developmental toxicity was observed in the rabbit at dose levels that induced effects in the does: body weight loss and decreased food consumption. In the multi-generation reproduction study, qualitative evidence of increased susceptibility of rat pups is observed. The parental and offspring systemic NOAELs are 17.9/21.7 (M/F) mg/kg/day and the offspring/parental systemic LOAELs are 51.0/60.1 mg/kg/day based on a decrease in mean body weight, body weight gain and food consumption in the parents and significant reductions in pup weights in both generations, reductions in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation in the offspring. The offspring effects are considered to be more severe than the parental effects.

3. *Conclusion*. There is a complete toxicity data base for acetamiprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency FQPA Safety Factor Committee recommended that the FQPA safety factor be reduced to 3x in assessing the risk posed by this chemical. The Committee determined that the safety factor is necessary when assessing the risk posed by acetamiprid because there is qualitative evidence of increased susceptibility following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats. However, the Committee concluded that the safety factor could be reduced to 3x for acetamidprid because the toxicology database is complete; there is no quantitative or qualitative evidence of increased susceptibility following *in utero* exposure of rat and rabbit fetuses; the dietary (food and water) and residential exposure assessments will not underestimate the potential exposures for infants, children, and/or women of childbearing age; and the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study and a safety factor. The Committee recommended that the safety factor be required for all population subgroups when assessing chronic dietary exposures as well as when assessing residential short-, intermediate-, and long-term exposure durations to address the concern for the effects seen following prenatal/postnatal exposure to acetamiprid in the 2-generation reproduction study in rats; the FQPA Safety Factor can be removed (i.e., reduced to 1x) when assessing acute dietary exposure.

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 drinking water level of concerns (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 from food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the population adjusted dose (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 aggregate risk assessment scenario: 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 from food to acetamiprid will occupy 17% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 38% of the aPAD for all infants (<1 year old) and 40% of the aPAD for children ages 1–6 years. In addition, there is potential for acute dietary exposure to acetamiprid 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 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ACETAMIPRID

Population Subgroup	aPAD (mg/kg/day)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppd)[a]
U.S. Population	0.10	17	0.0008	17	2,900
All Infants (<1 year old)	0.10	38	0.0008	17	620
Children 1–6 years	0.10	40	0.0008	17	600
Children 7–12 years	0.10	22	0.0008	17	780
Females 13–50 years	0.10	11	0.0008	17	2,700
Males 13–19 years	0.10	12	0.0008	17	3,100
Males 20+ years	0.10	10	0.0008	17	3,200
Seniors (55+ years)	0.10	10	0.0008	17	3,100

[a] Drinking Water Level of Comparison = aPAD-Acute DietaryExposure (mg/kg/day) × body weight (kg) × 1,000 μg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetamiprid from food will utilize 24% of the cPAD for the U.S. population, 45% of the cPAD for all infants (< 1 year old) and 64% of the cPAD for children ages 1–6 years. Based on the use pattern, chronic residential exposure to residues of acetamiprid is not expected. In addition, there is potential for chronic dietary exposure to acetamiprid 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 5:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
U.S. Population	0.023	24	0.0008	4	620
All Infants (<1 year old)	0.023	45	0.0008	4	130
Children 1–6 years old	0.023	64	0.0008	4	80
Children 7–12 years old	0.023	35	0.0008	4	150
Females 13–50 years old	0.023	17	0.0008	4	670

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppd)[a]
Males 13–19 years old	0.023	19	0.0008	4	650
Males 20+ years old	0.023	16	0.0008	4	680
Seniors (55+ years old)	0.023	17	0.0008	4	670

[a] Chronic Drinking Water Level of Comparison = cPAD-Chronic Dietary Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.

3. *Short-term risk and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently proposed for uses that could result in short-term and intermediate residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term and intermediate exposures for acetamiprid. Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that aggregated food and residential exposures aggregated result in aggregate MOEs of 18,000 for adults, and 23,000 for youth (ages 10–12 years) for the non-oral routes of exposure (i.e., combined dermal and/or inhalation pathways). These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of acetamiprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 6:

TABLE 6.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM AND INTERMEDIATE-TERM EXPOSURE TO ACETAMIPRID

Population Subgroup	MOE (Food)[a]	Total Non-Oral MOE[b]	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term and Intermediate-Term DWLOC (ppd)[c,d]
U.S. Population	2,780	18,000	4	0.0008	1,500
All Infants (<1 year old)	1,462	N/A[e]	4	0.0008	400
Children 1–6 years old	1,021	N/A	4	0.0008	400
Children 7–12 years old	1,858	23,000	4	0.0008	400
Females 13–50 years old	3,778	18,000	4	0.0008	1,400
Males 13–19 years old	3,363	18,000	4	0.0008	1,600
Males 20+ years old	4,084	18,000	4	0.0008	1,600
Seniors (55+ years old)	3,745	18,000	4	0.0008	1,600

[a] Food MOE = Short-term NOAEL (15 mg/kg/day) ÷Chronic Dietary Exposure (food only)
[b] Total non-oral MOEs are from the Occupational and Residential Risk Assessment. Note that given the currently requested use patterns, incidental oral exposure is an insignificant pathway of exposure and has not been factored into the DWLOCs.
[c] Maximum Water Exposure = Short/Intermediate-term NOAEL (15 mg/kg/day) × (1 ÷ Target MOE) - (1 ÷ Food MOE + 1 ÷ Oral MOE + 1 ÷ Non-Oral MOE)
[d] Short- and Intermediate-term Drinking Water Level of Concern = Maximum Water Exposure (mg/kg/day) × body weight (kg) × 1,000 µg/mg ÷ water consumption (L/day). Body weight = 70 kg (males and general pop.), 60 kg (females), or 10 kg (infants and children). Consumption = 2 L/day for adults or 1 L/day for infants and children. Values have been rounded to 2 significant figures.
[e] N/A = Not Applicable

4. *Aggregate cancer risk for U.S. population*. The Agency classified acetamiprid into the category not likely to be carcinogenic to humans based on the absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the laboratories historical control data from the same lab: the increase was within the range of values from the supplier.

5. *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 acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Enforcement methods are available for vegetable and non-citrus crops, citrus crops, and livestock commodities. Citrus and livestock methods consist of solvent extraction, followed by solid-phase cleanup, and high performance liquid chromatography/ultraviolet determination of residues. The vegetable and non-citrus crop method differs in that it employs gas chromatography/

electron capture detection determination of residues. The livestock method analyzes acetamiprid and IM-2-1 simultaneously. Limits of quantitation are 0.01 ppm for vegetable and non-citrus fruits, meat, milk, fat, and eggs; and 0.05 ppm for citrus and meat byproducts. Adequate radiovalidation and independent laboratory validation (ILV) data have been received and the method was forwarded to the Analytical Chemistry Laboratory (ACL) for petition method validation (PMV). The petitioner will be required to make any modifications or revision to the proposed enforcement method resulting from PMV. When the PMV is finalized, the method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits for acetamiprid in or on citrus fruit group, citrus dried pulp, cotton, fruiting and leafy, leafy vegetables, tomato paste; and for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) in or on fat, meat, and meat byproducts of cattle, goat, hog, horse, and sheep; milk; poultry eggs, fat, liver, and meat.

C. Conditions

The conditions of the acetamiprid registration contained the following confirmatory data and label requirements: rotational crop storage stability; and radiovalidation data for IM-2-1-amide in ruminant muscle. The storage stability data is considered confirmatory data since the Agency has examined other storage stability data of acetamiprid and found it to be stable upon storage. The Agency decided to impose tolerances on meat and poultry products upon review of the data although tolerances for IM-2-1 were not considered by the registrant in the original submission.

V. Conclusion

Therefore, tolerances are established for residues of acetamiprid N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-N1-methylacetamidine in or on citrus fruit group, citrus dried pulp, cotton undelinted seed, cotton gin byproducts, fruiting vegetable group, grape, leafy vegetable group (except brassica), leafy vegetable brassica group, pome fruit group, and tomato paste; and tolerances for the combined residues of acetamiprid and IM-2-1 N1-[(6-chloro-3-pyridyl) methyl]-N2-cyano-acetamidine in or on fat, meat, and meat byproducts of cattle, hog, horse, goat, and sheep; milk; eggs; fat, liver and meat of poultry.

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–301225 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 May 28, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.

EEPA 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–301225, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption.

Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104– 113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2002.

James Jones,

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 374.

2. Section 180.578 is added to read as follows:

§ 180.578 Acetamiprid; tolerances forresidues.

(a) *General.* (1) Tolerances are established for residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine in or on the following commodities:

Commodity	Parts per million
Citrus, dried pulp	1.20
Cotton, gin byproducts	20.0
Cotton, undelinted seed	0.60
Fruit, citrus group	0.50
Fruit, pome group	1.0
Grape	0.20
Tomato, paste	0.40
Vegetable, brassica, leafy group	1.20

Commodity	Parts per million
Vegetable, fruiting group	0.20
Vegetable, leafy group, except brassica	3.00

(2) Tolerances are established for the combined residues of the insecticide acetamiprid N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine andN1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-acetamidine in or on the following commodities:

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat	0.10
Cattle, meat byproducts	0.20
Egg	0.010
Goat, fat	0.10
Goat, meat	0.10
Goat, meat byproducts	0.20
Hog, fat	0.10
Hog, meat	0.10
Hog, meat byproducts	0.20
Horse, fat	0.10
Horse, meat	0.10
Horse, meat byproducts	0.20
Milk	0.10
Poultry, fat	0.010
Poultry, liver	0.050
Poultry, meat	0.010
Sheep, fat	0.10
Sheep, meat	0.10
Sheep, meat byproducts	0.20

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 02–7098 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket Nos. 98–137, ASD File No. 98–91; FCC 99–397]

1998 Biennial Regulatory Review—Review of the Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the rules published in the **Federal Register** on April 10, 2000. These rules amend the Commission's rules governing the depreciation requirements for price cap incumbent local exchange carriers. The Commission details the reporting and data requirements that the carriers must comply with when they want to change their prescribed depreciation rate.

DATES: Section 43.43 paragraphs (c) and (e) published at 65 FR 18926 (April 10, 2000) became effective on June 29, 2000.

FOR FURTHER INFORMATION CONTACT: Tim Peterson, Deputy Division Chief, Accounting Safeguards Division, Common Carrier Bureau, (202–418–1575).

SUPPLEMENTARY INFORMATION: On June 19, 2000 Office of Management and Budget (OMB) approved the amendment to the depreciation rate rules § 43.43 (c) and (e) pursuant to OMB Control No. 3060–0168. Accordingly, the rules in § 43.43 (c) and (e) became effective on June 29, 2000.

List of Subjects in 47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7262 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970930235–7235–01; I.D. 032102B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial hook-and-line fishery for king mackerel in the exclusive economic zone (EEZ) in the southern Florida west coast subzone. This closure is necessary to protect the Gulf group king mackerel resource.

DATES: Effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002.

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

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

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota newly implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with hook-and-line gear and run-around gillnets (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using hook-and-line gear in the southern Florida west coast subzone was reached on March 22, 2002. Accordingly, the commercial hook-and-line fishery for king mackerel in the southern Florida west coast subzone is closed effective 12:01 a.m., local time, March 23, 2002, through June 30, 2002, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The southern subzone is that part of the Florida west coast subzone which from November 1

through March 31 extends south and west from 25°20.4′ N. lat. to 26°19.8′ N. lat.(a line directly west from the Lee/Collier County, FL boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8′ N. lat. and 25°48′ N. lat.(a line directly west from the Monroe/Collier County, FL boundary), i.e., the area off Collier County.

NMFS previously determined that the commercial quota for Gulf group king mackerel in the northern Florida west coast subzone was reached and closed that segment of the fishery on November, 10, 2001 (66 FR 57396, November 15, 2001). Next, the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on November 19, 2001 (66 FR 58410, November 21, 2001). Subsequently, NMFS determined that the commercial quota that the commercial quota for Gulf group king mackerel for vessels fishing with run-around gillnets in the southern Florida west coast subzone was reached and closed that segment of the fishery on January 28, 2002 (67 FR 4677, January 31, 2002). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the southern Florida west coast subzone through June 30, 2002.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

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

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

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

Dated: March 22, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–7329 Filed 3–22–02; 2:24 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 59
Wednesday, March 27, 2002

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI–STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to the Certificate of Compliance (CoC). This amendment would modify the present cask system design to permit a licensee, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI–STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment would also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications would be made applicable to CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: Comments on the proposed rule must be received on or before April 26, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; email CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, email jmm2@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI–STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: June 1, 2000.

Amendment Number 1 Effective Date: June 10, 2002.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7321 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is proposing to amend its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov.* Copies of comments may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as ''a board consisting of three PBGC officials.''

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this proposed rule would authorize any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC would continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

The PBGC invites public comment on this proposal.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from the notice and public comment and delayed effective date requirements of section 553 of the Administrative Procedure Act. However, because the PBGC wishes to provide an opportunity for public comment, this rule is being published as a proposed rule.

Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. *See* 5 U.S.C. 601(2), 603, 604.

This rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Add new § 4003.61 to read as follows:

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

Issued in Washington, DC, this 20th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–7297 Filed 3–26–02; 8:45 am]

BILLING CODE 7708–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–367; MM Docket No. 02–31, RM–10351]

Radio Broadcasting Services; Memphis, TN, Olive Branch & Horn Lake, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc. the reallotment of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, and modification of the license for Station WOTO at coordinates 35–04–19 and 89–59–13. To ensure local service at Olive Branch, Clear Channel has requested the reallotment of Channel 266C1 from Memphis, Tennessee to Olive Branch, Mississippi, and modification of the license for Station KJMS at coordinates 35–08–01 and 90–05–38. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 239A to Olive Branch and Channel 266C1 at Horn Lake.

DATES: Comments must be filed on or before April 8, 2002, and reply comments on or before April 23, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson L.L.P., 555—13th Street, NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–31, adopted February 6, 2002, and released February 15, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 239A and adding Channel 266C1 at Olive Branch and by adding Horn Lake, Channel 239A.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 266C1 at Memphis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7190 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–565, MM Docket No. 02–49, RM–10220]

Radio Broadcasting Services; Worcester and Westborough, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Entercom Boston License, LLC, proposing the reallotment of Channel 297B from Worcester to Westborough, Massachusetts, as the modification of Station WAAF(FM)'s license accordingly. Channel 297B can be reallotted to Westborough in compliance with the Commission's minimum distance separation at without the imposition of a site restriction petitioner's presently licensed site. The coordinates for Channel 297A at Westborough are 42–18–11 North Latitude and 71–53–52 West Longitude. Since Westborough is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been requested. In accordance with Section 1.420(i) of the

Commission's Rules, we will not accept competing expressions of interest for the use of Channel 297A at Westborough, Massachusetts.

DATES: Comments must be filed on or before April 29, 2002, reply comments on or before May 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elizabeth N. Alexander, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW, Suite 600, Washington, DC 20006–1809 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–49, adopted February 27, 2002, released March 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester; and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7189 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–7; Notice No. 4]

RIN 2130–AA68

Freight Car Safety Standards: Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This document terminates the rulemaking action initiated in FRA Docket No. RSFC–7. In its Notice of Proposed Rulemaking (NPRM), FRA proposed an amendment of the Freight Car Safety Standards, which currently do not apply to maintenance-of-way (MOW) equipment if stenciled and not used in revenue service. The NPRM proposed an additional 20 miles per hour (mph) speed restriction on MOW equipment in order for it to be operated without complying with the Freight Car Safety Standards. Termination of this rulemaking is based on consideration of the comments submitted in response to the NPRM, the need to consider and evaluate more current safety and accident data related to MOW equipment, and FRA's desire to potentially reevaluate and develop alternative approaches to the issues, if necessary, based on current fact-based data.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop 10, Washington, D.C. 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION: In March of 1994, FRA issued an NPRM proposing an amendment to the Freight Car Safety Standards (FCSS), codified in 49 CFR Part 215, to make all maintenance-of-way (MOW) equipment subject to the FCSS except such equipment stenciled MOW equipment, not used in revenue service, and restricted to a speed of less than 20 miles per hour (mph). *See* 59 FR 11238 (March 10, 1994). Under the existing regulations, the exception for MOW equipment requires only that it be stenciled and not used in revenue service. Thus, FRA proposed an additional restriction related to the operation of MOW equipment not in compliance with the FCSS, requiring such equipment to be operated at a speed of less than 20 mph.

The preamble to the NPRM discussed the basis of FRA's concerns regarding the need for the proposed speed restriction on MOW equipment. The preamble noted that FRA conducted three surveys between 1983 and 1986 on MOW equipment which resulted in a high percentage of such equipment being found with conditions not in compliance with the FCSS. *See* 59 FR 11239. It should be noted that the conducted surveys disclosed that the percent of MOW equipment found with defective conditions under the FCSS decreased with each successive survey. *See id.* The preamble also discussed a train derailment which occurred on July 18, 1983, in Crystal City, Missouri, the investigation of which indicated that a MOW vehicle with a cracked and displaced centerplate was a major contributing cause to the accident. The NTSB estimated the damages related to this accident at more than $1 million and issued the following recommendation to FRA:

Require that MOW cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on MOW cars being moved in revenue freight trains to compensate for the actual mechanical conditions of the cars. (R–84–10) (February 22, 1984).

In November of 1994, NTSB closed this 10-year-old recommendation and has not reissued a similar recommendation. The preamble to the NPRM also discussed the potential impact of AAR's 1994 change to its interchange rules, prohibiting the interchange of cars equipped with friction bearings. As a large number of MOW cars were equipped with friction bearings, FRA raised concerns regarding whether the industry's prohibition on interchanging such equipment would result in a reduction in the number of locations on the railroads where personnel are capable of performing frequent inspections and lubrication of these components.

FRA's economic evaluation developed in connection with the NPRM identified the costs and benefits related to the proposed 20-mph speed restriction on

MOW equipment not in compliance with the FCSS. The evaluation identified approximately $1.1 million in safety benefits based on a review of FRA's accident data between 1980 and mid-1987. This review identified 26 accidents caused by MOW equipment which resulted in approximately $1.1 million in damage to railroad property and involved no injuries or fatalities. The evaluation also estimated the costs associated with the proposed restriction based on the assumption that railroads would repair existing equipment to meet the FCSS rather than operate MOW equipment pursuant to the proposed 20-mph restriction. The evaluation identified a 10-year Net Present Value cost associated with the proposed restriction of approximately $4.4 million. The estimate determined that approximately $3.3 million would be required to bring existing MOW equipment into compliance with the FCSS and that an additional $330,000 a year would be required to maintain the equipment consistent with the requirements of the FCSS.

FRA received written comments from six parties raising various concerns related to the additional restriction proposed in the NPRM. These commenters included:

Association of American Railroads (AAR),
American Short Line and Regional Railroad Association (ASLRRA),
Brotherhood of Railway Carmen, Division of the Transportation Communications International Union (BRC),
Brotherhood of Maintenance of Way Employes (BMWE),
Duluth, Missabe and Iron Range Railway Company (DMIR), and
Norfolk Southern Corporation (NS).

AAR, ASLRRA, and NS all commented that FRA failed to establish a significant safety rationale for proposing the costly operating restrictions on MOW equipment. These commenters did not believe that any change to the FCSS was warranted. AAR objected to the age of the data used by FRA to justify the proposal in 1994 and noted that the data itself showed that the percentage of MOW equipment containing defective conditions under the FCSS was declining into the mid-1980s. AAR also noted that none of the accidents relied on by FRA involved any injury or fatality. AAR further contended that MOW equipment was sufficiently covered by the safety appliance and power brake regulations contained in 49 CFR parts 231 and 232 and that FRA had not established that such equipment comprised a safety threat.

AAR and NS also asserted that FRA's economic evaluation was seriously flawed because it failed to consider the impact of the proposal on MOW equipment over 50 years old. These commenters contended that the proposal to apply the FCSS to MOW equipment would significantly impact MOW equipment which is more than 50 years old because § 215.203 imposes strict limits on the use of such equipment. AAR asserted that the impact on 50-year-old MOW equipment would constitute a significant ''opportunity cost'' to the industry. AAR and NS contended that the cost to replace this older equipment would be in excess of $220 million.

AAR also claimed that FRA's economic analysis significantly underestimated the maintenance costs involved with maintaining MOW equipment in accordance with the FCSS. AAR noted that FRA only assumed $41 per car annually to maintain the equipment consistent with the requirements of the FCSS. AAR asserted that the annual maintenance cost would likely be closer to $300 per car. Thus, AAR claimed that FRA's cost estimates should have been increased by approximately $12 million based on this factor alone.

AAR and NS claimed that FRA could apply the FCSS to MOW equipment in a manner which was much less costly than that proposed by FRA. These commenters recommended that any application of the FCSS to MOW equipment should provide an exception from § 215.203 for cars more than 50 years old. They also recommended an exemption for emergency and specialized MOW equipment (pile drivers, track geometry cars, snow plows, etc.) and suggested that a significant transition period, at least five years, be provided to allow the industry time to upgrade existing equipment. In a second set of comments (August 4, 1995) submitted in response to FRA questions, AAR suggested a further alternative to the proposed 20-mph speed restriction for improving the mechanical state of existing MOW equipment. This alternative involved the creation and application of a System Safety Quality Assurance (SSQA) performance standard based on train accidents per million-train-miles. Under this approach, a railroad's failure to operate within the established SSQA standard would result in FRA's imposition of certain equipment and operational requirements on that railroad, provided there is a link between the imposed requirements and the safety problem.

Although the ASLRRA did not believe any change to part 215 was justified, it recommended that if FRA determines a speed restriction is necessary, that the restriction should be 25 mph rather than 20 mph as proposed. ASLRRA stated that 25 mph would be consistent with operations over FRA Class 2 track and would reduce the burden being imposed on many short line operations because a larger number of such railroads already operate at restricted speeds. ASLRRA asserted that it would be a significant expense for most smaller railroads to bring MOW equipment into compliance with part 215 and, thus, most smaller railroads would comply with any imposed speed restriction. Furthermore, a 25-mph speed limit would avoid confusion with existing federal track standards and would reduce the number of rules with which small railroads must deal.

Comments received from the DMIR, in response to the NPRM, contended that there would be a significant impact on its operation if self-propelled MOW equipment (ballast regulators, tampers, high-rails, yard cleaners, motor cars, etc.) were required to comply with the requirements contained in the FCSS as proposed. DMIR asserted that virtually none of its self-propelled MOW equipment operates in revenue trains and, thus, did not pose the hazard FRA was attempting to address in the NPRM. Consequently, DMIR believed there was no safety benefit in requiring self-propelled MOW equipment to comply with the requirements of the FCSS when operated over 20 mph.

Comments received from BMWE and BRC supported the proposal to the extent that all MOW equipment should be covered by the provisions contained in the FCSS. These commenters generally contended that all equipment operated by the railroads should be required to comply with the FCSS whether or not they are used in revenue service, including equipment used solely in work train service. BRC believed that the proposed 20-mph speed restriction would not improve safety because most MOW equipment is not safe to operate at any speed if it does not comply with the FCSS. They asserted that no operating restrictions justify the use of equipment not in compliance with part 215.

In April 1996, subsequent to the closing of the comment period on the NPRM in this proceeding, FRA established the Railroad Safety Advisory Committee (RSAC), which is composed of representatives from railroad management, railroad labor, FRA, and other interested organizations. RSAC is designed to cooperatively address safety

problems based upon agreed-upon facts and, where regulation appears necessary, recommend to FRA regulatory options to implement the needed solutions. In September of 1997, FRA proposed that the RSAC accept the task of recommending revisions to part 215 as it pertains to MOW equipment. Had RSAC accepted the task, FRA would have withdrawn the NPRM to permit RSAC to work from a clean slate. The full RSAC could not reach consensus regarding acceptance of the task and, thus, the RSAC rejected the task of revising part 215. Many members of the RSAC did not believe that the issues raised in this proceeding involved a safety priority when compared to other tasks being addressed by the committee. In a late submission to the docket (January 1998), BMWE urged FRA to pursue this issue through traditional rulemaking despite the RSAC's rejection of the task. The BMWE further recommended that an additional amendment be made to part 215 which would prohibit employees or personnel from riding on, occupying, or being transported in equipment not meeting the requirements contained in part 215. BMWE believed this restriction should be imposed on all freight cars including those used exclusively in MOW service. Of course, such requirements would be well beyond the limited scope of the NPRM. After RSAC's rejection of the task, FRA allowed this proceeding to remain open while the agency pursued much higher regulatory priorities, including passenger equipment standards and revised freight power brake rules.

After consideration of all the comments and information noted above and based on general observations made by FRA during the last eight years with regard to MOW equipment and the applicability of part 215 to such equipment, FRA believes that a number of conclusions can be drawn. FRA agrees that the data relied on when developing the NPRM in this proceeding is dated and likely does not represent the condition of MOW equipment currently being operated by most railroads. The data relied on when developing the NPRM was gathered between 1980 and 1987. Thus, much of the data, both inspection and accident, is close to or more than two decades old. Since publication of the NPRM, FRA believes that railroads have made a concerted effort to bring most MOW equipment closer to compliance with the requirements contained in part 215, particularly MOW equipment regularly operated in revenue trains. Moreover, since 1980, FRA is not aware of any accident or incident involving MOW equipment resulting in injury or fatality in which a contributing cause of the accident or incident was a condition not in compliance with part 215 on a piece of MOW equipment. Consequently, while not intending to imply that there is no need to address the mechanical condition of MOW equipment currently in use on the nation's railroad's, FRA does believe that MOW equipment is maintained in better condition, from a mechanical perspective, than it was 15 to 20 years ago.

FRA further believes that any sustainable approach to the issues raised in this proceeding must be based on current, fact-based data which accurately captures both the safety need and the economic consequences of any course of action. Just as the safety benefits associated with this rulemaking have likely declined over time, similarly the costs of compliance have likely declined, as well. Further, many of the costs of concern to the railroads might very well be mitigated by continuing to except such equipment from the 50-year requirement. However, FRA recognizes that such assessments take considerable time and resources. In addition to simply gathering data, the agency must also determine whether the gathered data establishes a need for regulatory action and the form of that action. FRA believes that a rulemaking docket should not be left open and pending indefinitely while the agency determines whether or how such data gathering will be pursued or evaluated. Moreover, it must be stressed that MOW equipment remains subject to the FCSS if it is used in revenue service or is not stenciled and, under all circumstances, is subject to the federal regulations applicable to safety appliances and power brakes contained in parts 231 and 232, respectively. Thus, MOW equipment is continually inspected by railroads and monitored by FRA for compliance with those requirements as well as any other condition that may constitute an imminent safety risk to railroad employees or the public at large.

In addition to FRA's concerns regarding the data relied on in this proceeding, FRA also believes that the NPRM did not fully consider all of the potential economic and operational impacts that the proposed 20-mph speed restriction would have on the industry. FRA believes that several commenters in this proceeding raise valid concerns related to the impact of the proposal on MOW equipment over 50 years in age and the potential impact to the operation of a number of revenue trains. FRA also notes that a number of alternative approaches to the issues were provided in the comments received in response to the NPRM. Furthermore, several commenters recommended that additional restrictions be placed on certain MOW equipment or raised issues which were not fully explored or discussed in the NPRM which relate to the operation of MOW equipment. Therefore, should FRA develop fresh data and analysis which establishes a need for regulatory action, the content of that action is likely to be significantly different from that proposed in this NPRM and may focus on a variety of issues not contemplated in the current proceeding. Consequently, FRA believes that continuance of the present proceeding is neither productive nor useful at this time.

Termination of Rulemaking

Based on the foregoing discussion, FRA has decided to terminate this rulemaking. While we note that this rulemaking has been useful in raising both FRA's and the industry's awareness of the issues related to the operation and safety of MOW equipment, FRA believes that it is not prudent to pursue this rulemaking, based on its present content, at this time. FRA will continue to monitor the condition and operation of MOW equipment and will assess the need, from a safety perspective, to pursue either regulatory or other less formal methods to ensure the safety of both railroad employees and the public as it relates to the use and operation of this equipment. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on March 22, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7364 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 1999 calendar year before October 25, 2002. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 28, 2002. Insurers listed in the appendices are required to submit reports on or before October 25, 2002.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail *hspinner@nhtsa.dot.gov.* Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market

shares from A.M. Best, we propose to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we propose to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1999, NHTSA proposes to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $88,500 for any insurer added to Appendix A, $35,420 for any insurer added to Appendix B, and $10,219 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one company and add two companies; for Appendix B, the agency would remove one company; and for Appendix C, the agency would remove one company and add one company. The agency estimates that the net effect of this proposal, if made final, would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail*: Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: hspinner@nhtsa.dot.gov;* or

c. *Fax*: (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above, in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was ''NHTSA 1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The ''pdf'' versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is proposed to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group

CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group[1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group[1]
Nationwide Group
Progressive Group
SAFECO Insurance Companies
St. Paul Companies
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is proposed to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is proposed to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car System[1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–7367 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of three units whose boundaries encompass an area of approximately 1,697 hectares (ha) (4,193 acres (ac)) on the island of Kauai, Hawaii. Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on new information received during the comment period.

DATES: We will accept comments until the close of business on May 28, 2002. Requests for public hearing must be received by May 13, 2002.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials as follows:

(1) You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

(2) You may hand-deliver written comments to our Pacific Islands Fish and Wildlife Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Kauai is the oldest of the main islands, with most of its land mass being formed between 3.6 and 5.6 million years ago (MYA) from a single, large shield volcano, now represented by the Alakai Plateau and adjacent ridges. Younger, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene era (approximately 0.6 MYA). Due to the age of the island, the terrain is heavily eroded, with steep water-carved valleys and gulches characterizing the slopes of the Alakai Plateau and other isolated ridges. The Alakai Plateau is one of the wettest places on earth, receiving an average of 1.3 meters (m) (444 inches (in)) of rain annually (Juvik and Juvik 1998). Rain is delivered to the island by prevailing trade winds which come from the northeast. Southern and southwestern portions of the island lie in the rain shadow of the Alakai Plateau, ridges, or other uplands, and receive relatively little rain (22 to 91 centimeters (cm) (9 to 36 in) per year in Waimea Town) (NOAA 1990–1999).

The Koloa District lies in the southeast corner of Kauai and includes the town of Koloa and the community and resort area of Poipu. The area is dry to mesic (moderate rainfall), receiving an average of 107 to 223 cm (42 to 88 in) of rain annually. Although the Koloa District includes upland areas such as ridge lines derived from the Alakai Plateau and Haupu ridge, most human-occupied areas lie between sea level and about 183 m (600 ft) in elevation.

The Koloa area is composed of the youngest rock on Kauai, the Koloa Volcanics (MacDonald *et al.* 1960;

Langenheim and Clague 1987), with flows dating from between 0.6 and 1.4 million years. Younger, consolidated marine deposits and lithified sand dunes lie on top of some coastal portions of the older Koloa Volcanics. The great age and subsequent weathering that has occurred on Kauai has resulted in most lava tubes having been collapsed or filled with sediments (MacDonald *et al.* 1960; Howarth 1973; Berger *et al.* 1981; Howarth 1987), relative to younger islands (e.g., Hawaii) where lava tubes are common features (Howarth 1983a). It is only in portions of the Koloa District, with its younger, cave-bearing rock, relative lack of developed soils, and minimal rainfall and subsequent sedimentation, that caves are known to be relatively common features on Kauai (Howarth 1981).

Kauai Cave Wolf Spider

The Kauai cave wolf spider (*Adelocosa anops*) is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinctive eye pattern, including two particularly large eyes located within the middle row of eight eyes (Foelix 1982). While wolf spiders are typically visual predators, the most conspicuous physical character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and, in part, provides justification for the recognition of a separate genus for this taxon (Gertsch 1973). A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (mm) (0.5 to 0.75 in) in total body length with a reddish-brown carapace, pale to silvery abdomen and beige to pale orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and the third at the outer end of the chelicera. The tibiae of the two front pairs of legs have four pairs of ventral spines, and the tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long, silky, and shiny trichobothria (sensory hairs) (Gertsch 1973).

Dr. Frank Howarth, of the Bishop Museum, first discovered the Kauai cave wolf spider in Koloa in 1971, and it was formally described by Willis Gertsch of the Bishop Museum (Gertsch 1973). The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items through chemo-tactile sensory organs and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds on the Kauai cave amphipod, other cave-inhabiting arthropods, and alien species of arthropods that enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs produced in each egg sac (Wells *et al.* 1983; Howarth 1991). Newly hatched spiderlings are unusually large for wolf spiders, and are carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992). Other species of wolf spider may have in excess of 100 offspring per clutch and the newly hatched spiderlings are relatively small (Foelix 1982; Howarth 1991; Howarth and Mull 1992).

Kauai Cave Amphipod

The Kauai cave amphipod (*Spelaeorchestia koloana*) was discovered in some of the same caves as the Kauai cave wolf spider in 1971 (Bousfield and Howarth 1976). Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (thoracic appendage) of the amphipod, and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigmentation, and extremely elongate, spiny, post-cephalic appendages. Adult cave amphipods are 7 to 10 mm (0.25 to 0.4 in) in length with a slender, laterally compressed body and a hyaline cuticle, giving it a shiny, translucent appearance. The second pair of antenna are slender and elongate, with the flagellum (slender outer part of the antenna) only slightly longer than the peduncle (narrow stalk attaching to the body). Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well-developed pre-peduncles, and brood plates in the mature female are vestigial or entirely absent (Bousfield and Howarth 1976).

The Kauai cave amphipod is a detritivore and has been observed feeding on the roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting roots, sticks, branches, and other plant material washed into, or otherwise carried into the caves, as well as the fecal material of other arthropods. In large cave passages, most individuals are found in association with roots or rotting plant debris. When disturbed, this cave amphipod typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small number of large offspring (Poulson and White 1969; Bousfield and Howarth 1976).

Cave Habitat

Cave habitats have a high degree of zonation which plays a major role in the distribution of cave-dwelling organisms. Howarth and Stone (1990) recognize five distinct zones, not all of which are always present within any one cave. The first zone, the ''entrance zone,'' typically receives large amounts of solar radiation and is often vegetated with surface plants. Within the second zone, the ''twilight zone,'' ambient light levels decrease as one moves away from the entrance and photosynthesizing plants that may be present in the entrance decline. The third zone is referred to as the ''transition zone.'' The transition zone lacks light penetrance from the entrance, but other outside factors still greatly influence the cave habitat (e.g., ample air movement and daily temperature fluctuations). All of the above described zones (entrance, twilight, and transition) are typically influenced by surface conditions, daily cycles of warming and cooling, surface humidity, and a fair degree of air exchange occurring between these zones and surface habitats over relatively short periods of time (daily). The fourth cave zone, the ''dark zone,'' typically exhibits a sharp climatological change from the three previously described zones. The dark zone largely lacks daily air exchange with the surface and the three previously described zones. The relatively constant conditions encountered in the dark zone are often the result of a narrowing cave passage or low ceiling(s) that serve as physical barriers that restrict air exchange with other cave zones, or may be due to an up-slope orientation into a dead-end passage that traps warm, moist air. While the dark zone may undergo drastic changes in temperature and relative humidity, this more often is associated with seasonal rather than diurnal changes in air temperature. As a result of this, dark zones are seasonally stable in their micro-climatic conditions, remaining warm and humid during warm seasons. The final recognized cave zone is that of the ''stagnant'' zone (Howarth and Stone 1990). This zone lies deeper than the dark zone, receiving significantly less air exchange. As a consequence, the

composition of gasses within this last zone is often largely controlled by the decomposition of organic matter and maintains high concentrations of carbon dioxide and low concentrations of oxygen. While considered inhospitable by human standards, field observations have indicated that obligate cave-dwelling species are highly tolerant of these conditions and many may, in fact, thrive in the stagnant air zone of caves (Howarth and Stone 1990).

Cave habitats almost always contain small voids, cracks, and passages (mesocaverns) that cannot be accessed by researchers (Howarth 1983b), but remain readily accessible (or preferred) by small troglobites (obligate cave-dwelling animals). Although such voids and cracks can occur in any zone and possess characteristics of each of the five zones, they frequently represent areas of reduced air flow and consequently are most similar to the dark and stagnant air zones. Passages and mesocaverns in limestone caves can form or be destroyed at almost anytime in the life of the cave, depending on the chemical characteristics of the rock and normal geologic processes. Limestone caves often become larger over time as acidic waters from the surface dissolve away the calcium carbonate bedrock. Since water flow enlarges and creates caves in limestone by solution, subterranean voids do not fill through erosion. If any do, the water quickly finds a different path and enlarges a new void. Limestone caves grow deeper as the water table sinks and the surface over the caves dissolves away. Limestone caves improve with age because, although individual voids and passages may be short-lived, limestone caves continuously reform so that habitat can remain suitable for very long time spans. Caves derived from lava tube systems are fundamentally different from limestone in that basalt is not as readily soluble. Hence, lava tube passages and mesocaverns do not typically dissolve away and become larger (formed), but are subject to filling with sediments (destroyed).

The tendency for Hawaiian basalt to shrink and crack upon cooling results in younger lava flows having an abundance of mesocaverns throughout their structure that may serve as habitat or as corridors between habitats. However, the cave-building process typically stops some time after cave and crack formation, and is replaced by the cave-filling processes as weathering and sedimentation begin filling in mesocaverns and passages. On younger islands, the abundance of mesocaverns may allow cave animals to move among and between larger, adjacent lava tubes (Berger *et al.* 1981; Howarth 1991). However, because these smaller voids become filled with erosional sediment in older flows like the Koloa Volcanics, and as a result of surface disturbance (Mueller-Dombois and Howarth 1981; Adam Asquith, Service, *in litt.,* 1994a), it is less likely that the Kauai cave animals can readily move among separate lava tubes or other cave systems. Therefore, this places great importance on protecting the remaining undeveloped lands since they now represent only a fraction of habitat and interhabitat corridors where the cave animals can readily move between areas that were present before modern (i.e., post-European colonization) habitat modification.

Cave ecosystems are typically regarded as being food limited, and in most caves, the resident food-web communities require food input which is derived from surface systems based upon a photo-autotrophic (i.e., photosynthesizing plants) food base (Culver 1986). Nutrients may enter caves via subterranean streams or other surface runoff; as guano from bats, birds, rodents or other cave visitors or residents; or from plant roots that penetrate the cave (Culver 1986). Of these methods, roots from surface plants are the primary means by which Hawaiian caves receive nutrient input (Howarth 1973). Protection and/or restoration of surface plant communities is, therefore, an extremely important consideration for cave conservation in Hawaii, as it is elsewhere (Culver *et al.* 2000). Factors or activities that impact or modify surface vegetation over caves (e.g., fire, replacement of native or other perennial vegetation with grasses or some non-native plants) can damage or destroy the underlying cave community.

Adaptations of Troglobitic Animals

As discussed in the species descriptions of the Kauai cave wolf spider and cave amphipod, troglobites typically possess specialized anatomical characters that represent adaptations to life in the cave environment. Such anatomical adaptations include enlarged and/or elongate tactile-sensory appendages (e.g., legs or other appendages, antennae), and the lack of, or reduced, pigmentation and/or eyes (Barr 1968). Less obvious adaptations are also present in the physiology of troglobites and this has the potential to restrict their distribution within various cave zones (Huppop 1985). Laboratory studies with Hawaiian crickets were conducted that compared the abilities of closely related surface and cave-dwelling forms (*Caconemobius* spp.) to cope with desiccation (Ahearn and Howarth 1982). Surface-dwelling species exhibited considerably lower evaporation/desiccation rates than did the troglobitic species, and in one case, the surface species became dehydrated at half the rate of its cave-inhabiting relative. This low desiccation threshold largely confines these troglobites to the high-humidity environment of the deeper portions of caves, the dark and stagnant air zones. While such tests have not been conducted on the Kauai cave species, a logical assumption is that they have similar humidity tolerances, and this has been supported by field studies and observations conducted in the Kauai caves (see below). Similar adaptations in other troglobitic faunas (Vandel 1965; Barr 1968; Huppop 1985) support the universality of these traits in troglobitic animals.

Given the great vulnerability of troglobites to desiccation, adjacent mesocavern habitats will contain appropriate microclimate conditions and provide habitat or serve as refugia for troglobites when conditions in the main cave passages become drier or otherwise less accommodating. For example, during a previous survey of one cave of the Koloa area, the Kauai cave amphipod was not observed (Miura and Howarth 1978). However, on a subsequent survey, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth 1983a, 1983b). The foraging activities of both the Kauai cave wolf spider and the Kauai cave amphipod are restricted to dark, moist areas of large caverns and mesocaverns, and it is possible that the majority of their time is spent within such spaces.

Both Howarth (1983a) and Huppop (1985) have postulated that troglobites may be adapted to cope with low levels of oxygen and/or elevated concentrations of carbon dioxide, similar to conditions that would be encountered in the stagnant air zone of caves. This ability has been substantiated from observations in known stagnant air zones (Howarth and Stone 1990), as well as under controlled laboratory experiments. Hadley *et al.* (1981) conducted experiments with Hawaiian wolf spiders, both troglobites (*Lycosa howarthi*) and a related surface-dwelling species (*Lycosa* sp.). These researchers found the surface-inhabiting spider had a higher metabolic rate, requiring 2.5 times more oxygen as did its cave-dwelling relative. The reduced need for oxygen would better allow these spiders to survive in stagnant air cave zones. Given the ability of at least

some troglobites to cope with reduced oxygen and elevated carbon dioxide, as well as their ability to inhabit inaccessible mesocaverns, it is assured that many troglobites will be able to reside in areas not readily surveyed by biologists. Hence, cave habitats will extend well beyond those areas accessible by researchers (Howarth 1983a).

Species Distribution and Abundance

The Kauai cave wolf spider and Kauai cave amphipod are generally restricted to cave dark and stagnant air zones, or other subterranean habitats such as cracks, voids, and other mesocaverns containing microclimate conditions similar to those zones. However, both the cave wolf spider and amphipod may be found in sub-optimal cave habitats (e.g., cave transition zone) when conditions are appropriate (e.g., elevated humidity during periods of increased rainfall). All of the caves where the cave amphipod has been located contain penetrating plant roots and/or other decomposing plant material which serves as a food source for this detritivore. Plant material upon which the amphipods feed need not be from native plants, although non-native toxic or indigestible plants may be inappropriate or damaging for amphipod foraging. The Kauai cave wolf spider can be found in caves where the cave amphipod does not occur, but, other, non-native arthropods (e.g., cockroaches, wood lice, small spiders) can be used as food for this generalist predator.

Since its discovery in 1971, the Kauai cave wolf spider has been observed in only five caves in the Koloa area. Since 1996, Service biologists have conducted annual surveys, and starting in 1998, we have conducted biannual monitoring visits to three of the known occupied caves. Observations recorded in these visits include a total count of animals within each cave, potential threats to the listed cave organisms or their habitat, and the cave's condition (e.g., human disturbance, presence of standing water). The following information is based on these monitoring visits.

In three of these five caves, wolf spiders have been seen on only three occasions, but have been more often observed in two other caves. Of the two known occupied caves, in only one of these are wolf spiders encountered during every monitoring visit with 14 to 28 individuals being encountered during any monitoring visit (USFWS data from 18 January 1996 to 22 June 2001). The second cave contains a smaller number of wolf spiders (one to four per monitoring visit) and spiders are frequently absent; since April 2000, no wolf spiders have been observed in this cave. This decline in wolf spiders has been matched with a corresponding increase in the number of resident brown violin spiders, an alien, web-building species that likely preys upon both the Kauai cave wolf spider and amphipod (A. Asquith, *in litt.* 1994b; David Hopper, Service, *in litt.* 1999). Although these data are not conclusive, the declining numbers in the second of the regularly occupied caves warrants concern with regard to population persistence.

To date, the Kauai cave amphipod has been recorded from six caves in the Koloa area but is only regularly encountered in three of these caves. In one of these three caves, where the amphipod is found with the wolf spider, their numbers have ranged from 8 to 37 during the biannual monitoring visits. In another regularly occupied cave, amphipod numbers have increased steadily from 10 to 20 individuals per visit in pre-1998 counts to over 300 individuals during a visit in November 2000 (Service, unpub. data).

In three of the six known occupied caves, the lack of observations of the species is probably due to several factors. In one of these caves, relative humidity is often below 100 percent, which is a suboptimal condition for troglobites. Amphipods have been found in this cave when humidity conditions were optimal, such as after heavy rains which saturated the soil and increased the relative humidity in the dark zone. In a second cave, amphipods appeared to be resident but were only observed during two visits that were conducted soon after the cave had been exposed by heavy machinery, and prior to the cave being re-closed for road construction (A. Asquith, *in litt.* 1999). The last of these caves has been visited irregularly and amphipods have been observed during some, but not all, visits (Bousfield and Howarth 1976; D. Hopper, *in litt.* 1998a; D. Hopper, *in litt.,* 2000a).

Despite the data obtained in these biannual monitoring counts, the quantities of animals reported do not represent sound population estimates. The methods needed to conduct non-damaging, mark-recapture studies for accurate estimates of population size are yet un-developed for these animals, and no attempt to conduct such studies have been undertaken.

Cave systems may be separated by various physical barriers such as subterranean streams, or areas with developed soils that have filled in the mesocavern passages or habitats of these old caves (Mueller-Dombois and Howarth 1981). The degradation and loss of naturally occurring mesocavern habitats and corridors has likely been accelerated with development or other land uses which often requires clearing of vegetation, blasting, and filling of trenches and construction sites. These activities, as well as modern agricultural practices, exacerbate the rates of sediment mobilization (Kirch 1982; Cuddihy and Stone 1990) resulting in the filling of caves and mesocaverns (Howarth 1973; Mueller-Dombois and Howarth 1981; Burney *et al.* 2001).

Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod; the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod; the Mahaulepu Cave harbors a population of the cave amphipod (Service, unpublished data, 1998–1999); and a small cave near the Koloa bypass road harbors a fifth amphipod population.

Previous Federal Action

On June 16, 1978, we published in the **Federal Register** a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened (43 FR 26084). That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within one year after passage of the Amendments, which ever period was longer. An initial comprehensive Notice of Review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules.

We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, the Kauai cave wolf spider and Kauai cave

amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. However, in the Notice of Review for all animal taxa published on November 21, 1991 (56 FR 58804), the two Kauai cave arthropods were listed as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were again elevated to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations and included the two cave arthropods as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. The two cave arthropods were included as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review.

A proposed rule to list these two species as endangered was published on December 5, 1997 (62 FR 64340), and the final rule to list them was published on January 14, 2000 (65 FR 2348). Since that time, we have conducted conservation efforts through private lands partnerships with two landowners in the Koloa area within which the Kauai cave wolf spider and Kauai cave amphipod are known to occur.

In the proposed listing rule, we indicated that designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod was not prudent. Our concern was that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to these highly sensitive cave habitats, which could lead to incidents of vandalism, destruction of habitat, and unintentional cases of take. Also, we believed that critical habitat designation would not provide any additional benefit to these species beyond that provided through listing as endangered.

However, in the final rule, we determined that critical habitat designation was prudent as we did not find specific evidence of taking, vandalism, collection, or trade of these species or any other similarly situated species. Also, we did find that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for these two species outweighed the benefits of not designating critical habitat.

On June 2, 2000, the U.S. District Court for the District of Hawaii, in the case of *Center for Biological Diversity* v. *Babbitt and Clark,* Civ. No. 99–00603 (D. Haw.), ordered us to publish the final critical habitat designation by February 1, 2002. Currently, the plaintiffs and the Service have entered into a consent decree dated October 2, 2001, stating that we will jointly seek an extension of this deadline to August 10, 2002 (*Center for Biological Diversity, et al.* vs. *Norton,* Civil No. 01–2063 (D.D.C).

On February 14, 2001, we mailed pre-proposal letters to 96 interested parties and cave biologists informing them that we were in the process of designating critical habitat for the Kauai cave wolf spider and Kauai cave amphipod. We requested from them information on management of lands that are known to currently support the Kauai cave wolf spider or amphipod. The letters contained a fact sheet describing the two species and their habitat, and a map showing the presumed historic and current range (based on occupied habitat and the distribution of similar geology and soils) of one or both of these species. The letter requested any information regarding current or planned land management practices benefiting these animals or their habitat, which we requested be returned to us by March 31, 2001. We received eight responses to our landowner and interested parties mailing.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, in such instances critical habitat designation would not afford any additional regulatory protection under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be

inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that, when determining the final designation of critical habitat, we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, however, and populations may move from one area to another over time. In addition, given the cryptic nature of these animals and their habitat, additional populations may be discovered in other areas over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Kauai cave wolf spider and the Kauai cave amphipod. This information included: peer-reviewed scientific publications; the final listing rule for the Kauai cave wolf spider and Kauai cave amphipod (65 FR 2348); the Hawaii Natural Heritage Program database; unpublished field data collected by Service biologists, unpublished field notes and communications with other qualified biologists or experts (e.g., F. Howarth, Bishop Museum); published descriptions of the regional geology and soils (MacDonald *et al.* 1960; Foote *et al.* 1972); and the Recovery Outline and draft Endangered Species Recovery Plan for Two Cave Arthropods from Kauai, Hawaii (Service, *in litt.,* 2000).

The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, *in litt.* 1998; Belson 1999). Approximately 36 percent of the original habitat available for the cave animals is now designated as ''urban'' or ''urban residential'' (County of Kauai, *in litt.* 1994), and the human population of the Koloa area is expected to double by the year 2015 (KPMG Peat Marwick 1993). Thus most of the land that potentially harbored these animals has been highly modified, and an estimated 75 percent of the area has been rendered uninhabitable. The remaining habitat is being degraded by current land use or is threatened with degradation and destruction from proposed development and alien species. The area currently known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod represents a small percent of the species' likely range, harboring three known (sub)populations of the Kauai cave wolf spider and five known (sub)populations of the Kauai cave amphipod. These existing (sub)populations would be unlikely to persist because their small sizes make them vulnerable to extinction due to a variety of natural and human-induced processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (Frankel 1970, 1983). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Soule 1983; Gilpin and Soule 1986). In addition, the low reproductive potential of both cave species (less than five percent of their surface relatives) means that they require more time and space to recover from a disturbance than would similar animals living on the surface (F. Howarth, *in litt.* 2001).

One of the major threats facing the Kauai cave wolf spider and the Kauai cave amphipod is the introduction of invasive alien diseases (F. Howarth, *in litt.* 2001). Of particular concern are the several disease-causing micro-organisms that are being sold or are in development for sale as biopesticides in the United States. These species are inhabitants of soil, and would be expected to do well in caves. An example of one of these micro-organisms currently used in Hawaii is BT (*Bacillus thuringiensis*). Most recently BT was promoted in the State's efforts to eradicate an outbreak of dengue fever. In addition to intentional introductions, an unintentional introduction from a soil source originating outside of Hawaii could begin an epizootic that could sweep through part or all of the Koloa cave habitat. If portions of the habitat are more or less isolated and protected, the chances are greater that the animals would survive and eventually re-colonize their former habitat. This situation would also apply for other surface disturbances, such as oil spills, pollution, and pesticide application.

Human impacts in the Koloa caves, and resulting impacts on the Kauai cave wolf spider and Kauai cave amphipod are another concern. Caves are frequently sought out by curiosity seekers, and over-use of caves occurs readily due to their fragile nature (Howarth 1982; Culver 1986). In addition, both natural and cultural features (e.g., human burials and associated artifacts) of caves are often damaged or destroyed by collectors or

vandals (Howarth 1982; N. McMahon, Hawaii Dept. Historic Preservation, pers. comm., 2001). Unauthorized visitation and vandalism is such an issue in caves that the Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*; 102 Stat. 4546) was passed with the main intent of protecting cave-associated natural and cultural resources. Unauthorized entry and vandalism of the Koloa caves has been documented (D. Hopper, *in litt.,* 1998b, 2000a), and public interest in visiting caves is reflected in the publication of the location of two of these caves in a recent tourist guide (Doughty and Friedman 1998).

Human visitation to caves, even when not intentionally destructive, often results in severe impacts to the resident troglobites or other cave inhabitants. For example, nicotine is a potent insecticide that is easily introduced into the cave environment through cigarette smoke or discarded butts. Given the confined space and poor air circulation encountered in caves supporting suitable troglobite habitat, the effects of cigarette smoke are far more pronounced in caves (Howarth 1982; Howarth and Stone 1993). The impacts of cigarette smoke are not restricted to the main cavern and will also impact mesocavern habitats, where its effects cannot be seen. Although less toxic than cigarette smoke, wood fire smoke may be equally damaging since far more smoke is produced and detrital food reserves may be burned. The use of cigarettes, as well as fire activity, have been documented in the Koloa caves (D. Hopper, *in litt.,* 1998b, 2000a).

The narrow confines of most caves often result in focusing human travel and associated impacts to a small area, and increase the likelihood of troglobite mortality from unintentional trampling and the destruction or disturbance of food resources (e.g., roots, detrital matter). In addition, human use of caves frequently results in the importation of garbage, which encourages the invasion of caves by potential competitors and predators such as cockroaches (F. Howarth, Bishop Museum, pers. comm., 1994; A. Asquith, *in litt.,* 1994a).

The restricted area in which the Koloa cave animals occur is rapidly undergoing development (KPMG Peat Marwick 1993). The shallow cave habitat has been, and continues to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, diversion of waste water into subterranean voids and spaces, and other activities associated with development and agriculture.

The Kauai cave wolf spider and Kauai cave amphipod are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, non-native animals (Howarth 1985, pers. comm., 1994; A. Asquith, *in litt.,* 1994a, b; D. Hopper, *in litt.,* 1999), biological and chemical pest control activities associated with residential and golf course development (Hawaii Office of State Planning 1992); and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals, populations, and their limited distribution.

Due to the small number of known caves inhabited by these animals, we remain concerned that these threats may be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Since publication of the proposed listing rule for these animals in 1997 (62 FR 64340), we have found evidence of increased entry and vandalism in these caves (D. Hopper, *in litt.* 1998b, 2000b). While direct and intentional threats to these species from human take and collection are not documented, the sensitive nature of these animals and their habitat to increased human presence makes increased human awareness of these caves a potential direct threat to the Kauai cave wolf spider and Kauai cave amphipod.

Prior to human alteration of the surface and subsurface habitats, which resulted in the loss of subterranean habitat and dispersal corridors, troglobite subpopulations were probably more genetically mixed, being exposed to a greater frequency of emigration and immigration between these subpopulations. Connecting subpopulations via dispersal corridors would increase the overall effective population size and increase genetic exchange, thereby helping to alleviate the threats associated with small population size, and would better reflect the conditions under which the Kauai cave wolf spider and the Kauai cave amphipod existed prior to human alteration of the Koloa area. Areas between known, occupied caves that could contain important subterranean habitat (e.g., undeveloped lands) include, but are not limited to: Active and fallow agricultural lands, livestock pasture, golf courses, undeveloped land between ''low density'' residences, and undisturbed, but biologically invaded (i.e., non-native weeds) forests and shrublands. Protecting habitat areas around known subpopulations of these endangered cave animals would increase the likelihood of their survival since it would potentially increase the size of the habitat patch and increase the probability of emigration and immigration with other subpopulations. In addition, if each cave population is isolated, it will be only a matter of time before individual events eventually result in the extinction of each population in turn. If the caves are connected, the animals would have a better chance at retreating from disturbances and a disturbance affecting one or more cave systems will be less likely to result in the extinction of the species.

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of these species. Although we do not know whether the entire area is currently occupied, to date, all caves that have been surveyed within the Koloa Basin, that contain the primary constituent elements, have contained the Kauai cave amphipod and/or cave wolf spider. Hence, where appropriate habitat occurs within the Koloa Basin, we fully expect it will be occupied by one or both of these species. Intervening areas between the known occupied caves, that are comprised of cave-bearing rock, will contain occupied habitat and/or serve as corridors between suitable habitat and all of these areas need to be protected if these species are to be conserved. The final rule listing the Kauai cave wolf spider and Kauai cave amphipod stressed that these animals were at increasing risk from '''predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution''' (65 FR 2348). Recovery may require augmentation or enhancement of suitable cave habitat in areas in which the current population densities of one or both of these animals are known to be low due to food limitation. Protected areas around and adjacent to accessible, occupied caves are needed for recovery since these habitat areas will allow for the expansion of existing populations and help alleviate the threats associated with small population size. Subterranean habitats that lack appropriate food resources must also be protected since such spaces will provide opportunities for dispersal among

subpopulations, promoting mate location and genetic exchange, and will allow these animals to gain access to other needed resources that may become limiting within a smaller area.

In determining these areas we started with lands within the region containing geologic and soil characters similar or identical to those of known, occupied, accessible caves. This area includes the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972) where it over lies the Koloa Volcanic Series flows (MacDonald *et al.* 1960). Within this area, we conferred individually with the recognized expert on the probable distribution of appropriate mesocaverns (F. Howarth *in litt.* 2001). Multiple cave entrances are known within the following geographic zone—the area between Kukuiula Bay, northeast to Koloa Town and east to, and including, the volcanic cones inland of Poipu, as well as the Mahaulepu limestone bluff and cave and a wide connecting corridor in limestone and lava along the coast from Poipu to Mahaulepu. The whole region is similar to the Koloa Cave reserve (Kukuiula area) in surface environment and sporadic bare lava exposures, while areas to the south and east include prominent cave and mesocavern-bearing limestone features. Expert opinion is that these areas represent good habitat for the cave animals (F. Howarth, *in litt.* 2001). Within the areas described above are occupied lava tubes as well as geologic features indicating the presence of additional cave-bearing rock.

The Kukuiula area (that area lying between Kukuiula Bay, Koloa Town, Waikomo Stream and south to the coast) is known to contain numerous caves and cave-bearing rock. Two caves within this area are occupied by the Kauai cave wolf spider and the Kauai cave amphipod, and one of these caves is home to the largest known population of the wolf spider.

Three caves known to contain one or both of the Kauai cave arthropods are located in the area east of Waikomo Stream and west of the Poipu volcanic cones (Puu Wanawana, Puu Hunihuni, and the Puu Hi Reservoir cone). This area is similar to the Kukuiula area in the amount of exposed cave-bearing rock (pahoehoe lava flows) and degree of geologic weathering. In addition, Puu Wanawana and Puu Hi are spatter cones that are known to contain caves. In addition, the longest known cave on Kauai was located upslope from Kiahuna, between the Koloa Mill on the east and Koloa Town on the west. This cave was filled with cane waste in the early 1970s, before it could be surveyed but indicates that there are other caves and mesocaverns in the area (Howarth 1973, and F. Howarth, pers. comm., 2001).

The exposed sea cliffs along the coast from Poipu to Mahulepu are composed of calcified marine deposits. These karst outcrops are part of the same geologic deposits that contain the cave at Mahulepu that is occupied by the Kauai cave amphipod. Solution pockets and voids are abundant in this rock type and, like the cave at Mahulepu, lie on top of old, lava-tube-bearing pahoehoe flows. The presence of both basalt and calcareous cave-bearing rock along this coast line indicates that there is suitable habitat connecting the Mahaulepu caves with those of the lava tubes of the Koloa area.

Because a recovery plan for neither of these species has been completed, in making this determination we looked to the most likely historical distribution of the Kauai cave wolf spider and the Kauai cave amphipod. We included areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat, and further refined it by conferring with the recognized expert on the probable distribution of mesocaverns in the Koloa area (F. Howarth *in litt.* 2001). This approach is consistent with the approved recovery outline for the Kauai cave wolf spider and the Kauai cave amphipod. If, after critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod is designated, a final approved recovery plan for these animals calls for a different approach to the conservation of the Kauai cave wolf spider and the Kauai cave amphipod, we will consider amending the critical habitat designation, subject to resource and workload priorities.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to consider those physical and biological features essential to the species' conservation that may require special management considerations and protection. Such features are termed primary constituent elements, and include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, minerals and other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance and represent the historic geographical and ecological distributions of the species.

The habitat requirements of the Kauai cave wolf spider and Kauai cave amphipod may differ slightly as the wolf spider can feed on other arthropods that become trapped in caves or reside in caves facultatively. However, as observed elsewhere in Hawaii, the presence of a healthy, intact cave ecosystem, which includes roots or other sources of naturally occurring detritus and an associated detritivore or herbivore fauna, contains larger numbers of healthy troglobitic predators (A. Asquith, pers. comm., 2001). While native, troglobitic predators, detritivores, and herbivores may be present in caves lacking naturally occurring plant biomass, this situation represents an un-healthy cave ecosystem. Native troglobitic assemblages occurring in ''sterile'' caves (those lacking roots or other sources of active nutrient input) probably represent declining populations that will be extirpated as the existing plant biomass is consumed.

As with most troglobites, both the Kauai cave wolf spider and Kauai cave amphipod require dark or stagnant air zone habitats in caves. These zones typically have atmospheres with humidity at saturation levels (greater or equal to 100 percent), which is necessary to prevent desiccation and death of the troglobites.

A sustainable food base, such as the roots of living perennial plants or other sources of detritus, is necessary to support a breeding population and for the long-term survival of the Kauai cave amphipod and other herbivorous or detritivorous troglobites. In turn, healthy populations of herbivores or detritivores will help ensure that co-evolved predators, such as the Kauai cave wolf spider, will also persist as viable populations.

There is little information on what, if any, species of food plants are preferred by the Kauai cave amphipod. Since the amphipod is regarded as a detritivore, there may be little or no food specialization by these animals. However, plant species containing naturally occurring toxic compounds, such as tannins or alkaloids, might be of low food value, inhibit feeding, or result in the direct mortality of cave organisms. For this reason plant species and their potential toxicity must be considered as well. Likely candidates for suitable plants would be native species like ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

The primary constituent elements required by the Kauai cave wolf spider and the Kauai cave amphipod consist of two environmental parameters. The first of these is the presence of subterranean

spaces from 5 mm to 25 cm (0.2 in to 10 in) at the narrowest dimension (collectively termed ''mesocaverns'') or caves or passages, (spaces greater than 25 cm) (>10 in) that have dark and/or stagnant air zones that maintain microclimates with humidity at saturation levels. The second is the presence of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*) in these types of mesocaverns or caves.

The areas proposed as critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod are designed to incorporate what is essential for their conservation. Habitat components that are essential for these two species include the primary biological needs of foraging, reproduction, intra-specific communication, dispersal, genetic exchange, or non-restricted movement to appropriate microclimates in mesocaverns, and refugia from human induced or other environmental threats. Caves and mesocaverns containing actively growing tree roots or other sources of detritus provide a food source for herbivorous or detritivorous troglobites, which in turn provide food for predators. Such caves will be necessary for the long-term persistence of viable populations of the endangered troglobites by providing areas for foraging and reproduction. Caves and or mesocaverns lacking food resources but containing appropriate microclimates are important in providing corridors which facilitate movement and genetic exchange between populations or subpopulations. In addition, these areas may also provide dispersal opportunities from areas impacted by human-induced or other environmental threats, and may provide humid refugia at times when main cave passages become temporarily drier or otherwise less accomodating.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands for designation as critical habitat. First we selected critical habitat areas based on the known distributions of the Kauai cave wolf spider and the Kauai cave amphipod (known occupied habitat). We then added lands containing the primary constituent elements that are needed for recovery of the species but where, due to the cryptic nature of the habitat, it is unknown whether they are occupied or not. As discussed in greater detail in the Methods section, in deciding which areas were essential for recovery, we used the areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat. In addition, we conferred individually with the recognized expert on the probable distribution of mesocaverns in the Koloa area. These areas are likely to contain caves or appropriate mesocavern habitats. For the purpose of this proposed determination, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates using a scale of 1:85,000. Soil series was determined using information and maps from soil surveys (Foote *et al.* 1972). Geologic and soil features that appear to limit the distribution of cave and mesocavern habitats were determined using information and maps from MacDonald *et al.* (1960) and Foote *et al. (1972*).

We were unable to map the critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. As specified in the proposed rule language, existing features and structures within the boundaries of the mapped units that have resulted in below-surface modification or alteration are excluded from critical habitat designation. Human-constructed structures and features, such as large buildings, homes, major roads, and other activities or projects that require trenching, filling, and/or excavation, likely resulting in loss or severe degradation of the primary constituent elements and are therefore not included within this critical habitat designation. Such human-constructed structures and features would include homes and buildings for which the underlying bedrock has been altered for their construction through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water and underground electrical supply corridors and conduits. Additional areas that are also excluded from critical habitat include paved roads, locations of prior or current use as a quarry, and sewage treatment facilities. Included in critical habitat are areas that have been modified on the surface, but for which below-surface modifications have not severely altered the underlying bedrock and subterranean habitat. These land uses include but are not limited to—agriculture (e.g., sugar cane, corn, coffee), range land, golf courses, county and city parks, unimproved roads, and undeveloped lands. These areas may lie adjacent to areas that have undergone extensive below-surface modification. Prior to finalizing this rule, we will seek ways to refine our mapping in order to exclude, from within the critical habitat boundary, developed areas or other areas that do not contain the primary constituent elements and therefore, would not be considered to be critical habitat.

Critical Habitat Proposal

Lands proposed as critical habitat provide the full range of primary constituent elements needed by the Kauai cave wolf spider and Kauai cave amphipod, including cave-bearing rock underlying undeveloped areas and areas with minimum or moderate surface modification in the Koloa District, to be used for foraging, shelter, and raising of offspring. Habitat that provides for dispersal of individuals and allows genetic exchange between populations has also been incorporated. Undeveloped areas lying between known occupied caves will contain subterranean spaces and voids that will provide primary habitat or act as corridors for movement of animals between foraging sites and dispersal between subpopulations, and should be regarded as critical habitat. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

Lands proposed as critical habitat for the Kauai cave wolf spider and Kauai cave amphipod occur in three separate units. The approximate area encompassing the proposed designation of critical habitat by land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
1a. Waikomo	128 ha	1,480 ha	0 ha	1,608 ha
	316 ac	3,658 ac	0 ac	3,974 ac
1b. Waikomo	0 ha	7 ha	0 ha	7 ha

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP—Continued

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
2. Haula	0 ac 0 ha	17 ac 68 ha	0 ac 0 ha	17 ac 68 ha
3. Puu Keke	0 ac 0 ha	168 ac 14 ha	0 ac 0 ha	168 ac 14 ha
	0 ac	34 ac	0 ac	34 ac
Total	128 ha 316 ac	1,569 ha 3,877ac	0 ha 0 ac	1,697 ha 4,193 ac

Proposed critical habitat includes land under private, county, and State ownership. Proposed lands include areas known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod and includes habitat with similar distribution of geologic and soil characteristics of known occupied habitat and that contain the most probable distribution of appropriate mesocaverns. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

Unit 1: Waikomo

Unit 1 is the largest unit, encompassing 1,615 ha (3,991 ac) of the greater Koloa Basin from sea level to elevations of approximately 120 m (400 ft) above sea level. This unit has been further divided into two subunits, 1A and 1B, since intervening areas between these units have undergone development and the below surface habitats have been extensively modified. Natural features of the unit include Kaulala Point to the southwest, Makahuena Point to the extreme south, Puna-hoa Point to the southeast, and Puu Hunihuni. Developed areas within the unit include Koloa Town and the Poipu residential and resort area.

Unit (subunit) 1A is the larger of the two subunits, comprising the vast majority of the proposed critical habitat (1,608 ha (3,974 ac)). The western portion of this subunit does not include areas along the coast where prior intensive development (e.g., major road, resort, and home construction) have greatly altered the subsurface habitats. Coastal areas excluded from this subunit include developed areas from Kaulala Point to western Makahuena Point. This subunit does include coastal areas from the Puu Ainako and Makawehi Bluff/Bench areas and to the east to the end of this subunit (i.e. Punahoa Point and Mahaulepu).

Unit 1B is a relatively small subunit (7 ha (17 ac)) that is comprised of undeveloped basalt and calcareous sea cliffs and adjacent areas from eastern Makahuena Point, east to areas above but adjacent to western Shipwreck Beach (Keoneloa Bay). This area has been spared from extensive development and the cave-bearing nature of the rock is identical to the Mahaulepu area which includes a cave occupied by the cave amphipod.

The Koloa Basin was the first location where large-scale sugar cane cultivation was established in Hawaii. Although sugar cane is no longer commercially harvested in Koloa, it is present over extensive areas where soils are relatively well developed and other land uses have not been implemented. Given the long history and use of this area by Polynesian and European cultures, very little native vegetation is present and the area is dominated by alien species such as kiawe (*Prosopis pallida*), koa haole (*Leucaena leucocephala*), banyan (*Ficus* spp.), Manila tamarind (*Pithecellobium deluce*), and numerous other naturalized ornamentals and cultivars. Adjacent areas containing more contiguous stands of native vegetation are located at higher elevations, in areas of well-developed soils, outside of the Waikomo Soils area and the proposed critical habitat.

This unit (two subunits) contains all of the known occupied habitats of both the Kauai cave wolf spider and Kauai cave amphipod (*i.e.*, a total of seven caves), and all of these caves occur within private or county land. All of the occupied caves occur in volcanic flows of the Koloa Volcanic Series, which are present as exposed rock or covered under the shallow soils of the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972), or in depositions of cave-bearing, calcareous (*e.g.*, calcified dunes, limestone) deposits. Proposed lands in Unit 1 provide for expansion of subpopulations by providing areas that share geologic and soil characteristics of known occupied habitat and include the most probable distribution of required mesocaverns. This habitat also has the largest human presence, which is likely to grow and increase, and therefore is under the greatest threat from human visitation and development. Inclusion of this additional habitat is essential to provide for: population expansion and dispersal, refuge from catastrophic events, and habitat corridors needed to maintain gene-flow within the population and/or subpopulations.

Unit 2: Haula

Unit 2 is the second largest of the three units, being approximately 68 ha (168 ac) in total area covered. The elevational range of this unit is sea level to approximately 110 m (360 ft) above sea level. Natural features of the unit include Haula, Paoo Point, and a portion of the coast of Kawailoa Bay. Unit 2 contains no developed areas, but the area has been greatly altered from various human uses such as grazing, and has been altered by the invasion of alien plants such as koa haole and iron wood (*Casuarina equisetifolia*). Native dryland vegetation such as ilima (*Sida fallax*) and maiapilo (*Capparis sandwichiana*) is common along portions of the coast line and uplands. The high-elevation portions of the unit need further surveys but are expected to be alien-dominated.

Unit 2 is composed of uplifted coral and algal reefs and consolidated calcareous deposits (MacDonald *et al.* 1960), and exposed, basaltic flows are not believed to be present within this unit. This unit lies only a short distance (approximately 350 m (1,100 ft)) from the occupied Waikomo Unit, and was likely once connected to that unit in the geologic past (Pleistocene Era) by deposits that have since eroded away or have been covered by unconsolidated sediments. It is not known if this unit is currently occupied by the Kauai cave wolf spider, Kauai cave amphipod, or other endemic troglobites.

Recent visits to this unit have found that the area is composed of exposed calcareous deposits containing cracks and solution pockets, which are indicative of the presence of underlying cave and mesocavern habitats. While

accessible caves have not been located, air-passages, holes, and fissures visible above ground strongly suggest the presence of underlying caves or mesocaverns. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Unit 3: Puu Keke

Approximately 14 ha (35 ac) in total area, Unit 3 is the smallest of the three units and lies between 30 to 60 m (100 to 200 ft) above sea level. It's geographic and geologic setting is similar to that of Unit 2 which lies less than 46 m (150 ft) to the east. Like Unit 2, the vegetation is not well characterized but most likely is largely dominated by alien vegetation.

This unit is also composed of consolidated calcareous deposits, and has a high probability of containing subsurface habitats, but details of the composition of these deposits are not known. The presence of obligate cave-dwelling organisms is presently unknown. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Effects of Critical Habitat Designation

Section 7. Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are unlikely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Kauai cave wolf spider or Kauai cave amphipod or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency (FEMA), or Natural Resources Conservation Service (NRCS)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the Kauai cave wolf spider and Kauai cave amphipod is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

Activities that may directly or indirectly adversely affect critical habitat for these cave animals include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation occurring directly above or adjacent to the cave or within the cave (roots) or mesocaverns (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., wood cutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Activities within or outside of the cave or other mesocavern (i.e., all cave-bearing rock) that promotes prolonged soil-disturbance, resulting in the filling of caves, voids, and mesocaverns, with sediments or other materials, or alters airflow, and/or light penetration such that habitat microclimates are exposed to conditions of desiccation. These activities include, but are not limited to: utilizing caves for the disposal of wastes or unwanted soil or rock, elevated and prolonged soil disturbance above or adjacent to cave-bearing rock, closing existing cave openings, breeching existing caves (i.e., creating new openings), modifying the natural geomorphology of a cave interior, passage, or opening;

(3) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential troglophilic) (i.e., non-obligate cave visitors) predators, parasitoids, diseases, or disease vectors (e.g., non-native arthropods), vertebrate or invertebrate food competitors, or invasive plant species), habitat fragmentation, overgrazing, water diversion or impoundment, groundwater pumping, inappropriately planned ground water disposal (e.g., diversion into potential habitat or prevention of natural water recharge into soils and rock above and adjacent to caves) or other activities that could potentially alter water quality or quantity to an extent that vegetation structure is affected, reduced cave humidity levels, habitat is flooded, or toxic materials (e.g., pesticides, fuel, solvents, or other household or industrial chemicals) are transported into habitat, and activities that increase the risk of fire within or outside habitats above the cave;

(4) Application of pesticides, herbicides, insecticides, fungicides or other such chemicals within, above, or adjacent to known habitat, that may directly or indirectly affect troglobitic organisms; and

(5) Release of certain biological control organisms within or outside of the critical habitat area. Biological organisms include, but are not limited to: predaceous or parasitoid vertebrates or invertebrates, fungi, bacteria, or other natural or bio-engineered bio-control organisms.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area affected by the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas where the species may be affected by their projects to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as the Department of Housing and Urban Development;

(4) Construction of communication sites licensed by the Federal Communications Commission;

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(6) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, NRCS), Department of Defense, Department of Transportation, Department of Energy, Department of the Interior (U.S. Fish and Wildlife Service, U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), ACOE, FEMA, Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Exclusions Under Section 3(5)(A) Definition

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod and do not require additional management or protection, we may exclude such areas from the proposed rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We used the following three guidelines to determine if a plan provides adequate management or protection—(1) A current plan specifying the management actions must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan

must provide assurances that the conservation management strategies will be effective.

In determining if management strategies are likely to be implemented, we considered whether: (1) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we considered whether: (1) The plan specifically addresses the management needs, including reduction of threats to the species; (2) such actions have been successful in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (4) adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we find no areas are adequately managed and protected to address all of the threats to Kauai cave wolf spider and Kauai cave amphipod and thus no areas qualify for exclusion under section 3(5)(A) of the Act. Several areas are covered under management plans and are currently managed in a manner that meets some of the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod, but we find that in none of these areas does present management adequately reduce all the primary threats to these species or that such management will be implemented into the future. For example, we have no assurance that one cave system, currently free of development plans, will retain a protected status for the long-term. Other areas of habitat lack a timely implementation schedule and appropriate management has lagged.

Adequate reduction of the threat from non-native predators (e.g., brown violin spider), already present within some caves may, to some extent, require different management activities. This may be difficult for managers to control and is not, at this time, a requirement in determining whether an area is being adequately managed such that it does not meet the definition of critical habitat.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an economic analysis for this proposal prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period on the draft economic analysis and proposed rule at that time.

We believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. Currently, there are no HCPs including the Kauai cave wolf spider and/or the Kauai cave amphipod as covered species. However, two separate landowners have entered into cooperative agreements with us that cover both of these species. Conservation actions were outlined in those agreements to benefit these species, and one landowner has initiated a couple of those actions, such as gating and locking one of the caves to prevent disturbance, and planting suitable vegetation above the cave foot print to enhance the below-ground habitat. The other landowner has not yet initiated conservation actions outlined in their agreement. In the event that these cooperative agreements are developed into HCPs, or future HCPs are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential for the conservation of these species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas to minimize impacts to critical habitat.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and/or distribution of Kauai cave wolf spider and/or the Kauai cave amphipod, and what areas are essential to the conservation of these species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(7) Economic and other values associated with designating critical habitat for the Kauai cave wolf spider and/or the Kauai cave amphipod, such as those derived from non-consumptive uses (e.g., hiking, sight-seeing, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The Service is soliciting comments and additional information on the Kauai cave wolf spider and amphipod, their habitats, and any new information on their status or status of the habitat or lands throughout the proposed critical habitat area.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the

beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

Executive Order 12866

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will 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, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the ''Exclusions Under Section 4(b)(2)'' section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the Kauai cave wolf spider and the Kauai cave amphipod since its listing in January 2000 (66 FR 4770). We will evaluate any additional impact through our economic analysis. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies actions.

(c) We do not believe this rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we will evaluate any additional impacts through an economic analysis.

(d) OMB has determined that this rule raises novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the

rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Kauai cave wolf spider or the Kauai cave amphipod. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where consultation would already be required due to the presence of the listed species, because the duty to avoid adverse modification of critical habitat would not likely trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since the Kauai cave wolf spider and the Kauai cave amphipod have only been listed since January 2000, and no consultations have occurred involving these species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because the Kauai cave wolf spider and the Kauai cave amphipod have been listed only a relatively short time and no activities with Federal involvement have occurred in these areas during this time, there is no history of any formal consultations based on the listing of these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

None of the proposed designation is on Federal lands. One of the three units contain land parcels owned and managed by the State of Hawaii. All of these State owned parcels are zoned as ''urban.'' On State lands, activities with no Federal involvement would not be affected by the critical habitat designation.

All three units of the proposed designation include private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation.

On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy, and the ACOE. In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve wetlands or waterways and occur due to the presence of species that spend at least part of their life in aquatic habitats. Consultation with the ACOE may occur if a permit is required for a project in Waikomo Stream that may negatively impact adjacent cave systems. Waikomo Stream runs between two known occupied cave systems and consultation may be required if the activities on the stream may affect the cave systems and the Kauai cave amphipod and Kauai cave wolf spider.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize

adverse impact to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Although we have no consultation history for the Kauai cave wolf spider or the Kauai cave amphipod prior to their listing as endangered species, a road project was slightly modified when a cave occupied by the Kauai cave amphipod was breeched and threatened by the construction. The Service provided technical assistance to the Federal Highways Administration (FHA) which resulted in the project being implemented in a timely fashion without major changes, little or no added project costs, and without impacting the cave habitat. The modifications suggested were based on the geometry of the cave in relation to the road construction project, and our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule, the draft Recovery Plan, and in this proposed critical habitat designation, as well scientific papers on the habitat requirements of troglobitic species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, identification and protection of occupied habitats, management of competing non-native species and predators, restoration and management of degraded habitat (surface and subterranean), and regular monitoring. For most foreseeable projects, these measures are not likely to result in a significant economic impact to project proponents because based on our experience, no proposed projects have been prevented from being implemented with or without some modification, due to the presence of known occupied caves, and some of these activities have been carried out by other private landowners with Service involvement. As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. It would not have a significant economic impact on a substantial number of small entities. The entire designation involves three units which primarily includes private land as well as some State and County lands. Probable future land uses in these areas are not expected to result in a Federal nexus or section 7 consultations. Projects likely to occur in these areas would likely involve only private funding and are not likely to require Federal permits. In these areas, Federal involvement— and thus section 7 consultations, the only trigger for economic impact under this rule— would be limited to a subset of the area proposed. The most likely Federal involvement would be associated with activities involving the U.S. Department of Agriculture, Federal Highways Administration (U.S. Department of Transportation), or the Federal Emergency Management Agency. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact since we expect that most proposed projects, with or without modification, can be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would provide can usually be implemented at low cost and include activities or measures such as modification of project foot-print, landscaping with native, perennial vegetation, and controlled use of pesticides. We are certifying that the proposed designation of critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod will not have a significant economic impact on a substantial number of small entities and that this proposed rule does not meet the criteria under SBREFA as a major rule: therefore an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under E.O. 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

a. This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Kauai cave wolf spider and the Kauai cave amphipod would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and will plan public hearings on the proposed designation during the comment period, if requested. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kauai cave wolf spider and Kauai cave amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The proposed designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available, upon request, from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

This rule was primarily prepared by the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.11(h) revise the entries for ''spider, Kauai cave wolf'' under ''ARACHNIDS'' and ''amphipod, Kauai cave'' under ''CRUSTACEANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
ARACHNIDS							
*	*	*	*	*		*	*
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E	676	17.95(g)	NA
*	*	*	*	*		*	*
CRUSTACEANS							
*	*	*	*	*		*	*
Amphipod, Kauai cave	*Spelaeorchestia koloana*	U.S.A. (HI)	NA	E	676	17.95(h)	NA
*	*	*	*	*		*	*

3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

a. In paragraph (g), critical habitat for the Kauai cave wolf spider (*Adelocosa anops*); and

b. In paragraph (h), critical habitat for the Kauai cave amphipod (*Spelaeorchestia koloana*), as set forth below.

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(g) *Arachnids.*

Kauai cave wolf spider (*Adelocosa anops*)

(1) Critical habitat units are depicted for the island of Kauai, Hawaii, on the map below.

(2) The primary constituent elements for the Kauai cave wolf spider and the

Kauai cave amphipod are the presence of subterranean spaces from 5 mm to 25 cm (0.2 in to 10 in) at their narrowest point (collectively termed ''mesocaverns'') and/or cave passages greater than 25 cm (>10 in) that have dark and/or stagnant air zones that maintain relative humidity at saturation levels (≥100 percent); and the presence in these types of mesocaverns or caves of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*). All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave wolf spider.

(3)(i) Existing human-constructed features and structures within the boundaries of mapped units that required trenching, filling or excavation resulting in below-surface modification or alteration would not contain either of the primary constituent elements and are excluded from critical habitat designation. Such features and structures include but are not limited to: Homes and buildings for which the underlying bedrock has been altered for their construction or through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water or underground electrical supply corridors; paved roads; and areas previously or currently used as a quarry.

(ii) Areas that have been modified on the surface but without trenching, filling or excavation resulting in below-surface modification or alteration are included in the critical habitat designation, even if they are adjacent to areas that have undergone below-surface modification. Such areas include but are not limited to: Active or fallow agricultural lands; range land; golf courses; county and city parks; unimproved road; and undeveloped lands.

(4) Unit 1—Waikomo Unit, Island of Kauai (1,615 ha (3,991 ac)):

(i) *Unit 1A.* Unit 1A consists of boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(A) 451377, 2420941; 451318, 2421296; 451365, 2421383; 451432, 2421109; 451596, 2421040; 451959, 2421072; 452051, 2421203; 452003, 2421772; 452057, 2421775; 452169, 2421853; 452125, 2421972; 451884, 2422006; 452107, 2422210; 452088, 2422291; 452683, 2421992; 452828, 2422429; 452693, 2422516; 452580, 2422426; 452535, 2422471; 452566, 2422602; 452491, 2422655; 452558, 2422751; 452872, 2422984; 453183, 2422994; 453561, 2422770; 453689, 2422802; 453710, 2423076; 453803, 2423173; 453928, 2423094; 454010, 2423198; 453900, 2423337; 453989, 2423437; 454124, 2423472; 454142, 2423601; 454096, 2423765; 454199, 2423872; 454267, 2423643; 454452, 2423640; 454616, 2424086; 454780, 2424043; 454757, 2423914; 454891, 2423911; 454673, 2423458; 454987, 2423312; 454770, 2422941; 454834, 2422595; 454688, 2422555; 454631, 2422409; 454866, 2422399; 455030, 2422481; 455001, 2422349; 455009, 2422131; 455631, 2421763; 456040, 2421846; 456196, 2422136; 456445, 2422235; 456572, 2421329; 456982, 2421024; 457171, 2421036; 457345, 2420833; 457027, 2420606; 456763, 2420391; 456728, 2419912; 456456, 2419772; 455868, 2419764; 455633, 2419645; 455601, 2419531; 455389, 2419219; 455225, 2419029; 455014, 2418947; 455014, 2419015; 454875, 2419059; 454861, 2419151; 455014, 2419182; 455056, 2419329; 455001, 2419400; 454781, 2419487; 454388, 2419255; 453419, 2419161; 453425, 2419586; 453516, 2419934; 453495, 2420106; 453368, 2420082; 453384, 2419931; 453275, 2419923; 453275, 2419438; 453252, 2419031; 453114, 2419045; 453162, 2419267; 452950, 2419349; 453029, 2419550; 452799, 2419624; 452707, 2419428; 452638, 2419449; 452691, 2419590; 452540, 2419649; 452416, 2419487; 452294, 2419410; 452057, 2419393; 451918, 2419437; 451814, 2419420; 451685, 2419686; 451812, 2419796; 451712, 2419918; 451815, 2420032; 451796, 2420129; 451672, 2420235; 451733, 2420399; 451601, 2420492; 451558, 2420333; 451561, 2420058; 451614, 2420037; 451587, 2419912; 451516, 2419770; 451449, 2419696; 451188, 2419748; 451212, 2419865; 450884, 2419942; 450661, 2419968; 450603, 2419919; 450443, 2419921; 450202, 2419919; 449823, 2420156; 449805, 2420288; 449905, 2420389; 450560, 2420577; 451016, 2420683; 450974, 2420585; 451194, 2420502; 451201, 2420756; 451193, 2420887; 451377, 2420941.

(B) Excluding seven areas:

(*1*) Bounded by the following fifteen points (31 ha, 77 ac): 456695, 2420426; 456573, 2420330; 456388, 2420278; 456081, 2420300; 456051, 2420586; 456163, 2420674; 456259, 2420772; 456357, 2420895; 456412, 2420942; 456538, 2420879; 456570, 2420792; 456741, 2420763; 456682, 2420622; 456714, 2420574; 456695, 2420426.

(*2*) Bounded by the following fourteen points (1 ha, 3 ac): 454229, 2420036; 454177, 2420082; 454147, 2420126; 454158, 2420147; 454202, 2420185; 454250, 2420172; 454242, 2420136; 454231, 2420112; 454264, 2420082; 454294, 2420066; 454326, 2420085; 454332, 2420050; 454286, 2420025; 454229, 2420036.

(*3*) Bounded by the following seven points (2 ha, 5 ac): 452714, 2419850; 452561, 2419837; 452519, 2419846; 452504, 2419912; 452533, 2419989; 452613, 2419958; 452714, 2419850.

(*4*) Bounded by the following thirty-one points (16 ha, 38 ac): 452185, 2420755; 452280, 2420765; 452349, 2420719; 452402, 2420614; 452434, 2420595; 452451, 2420559; 452438, 2420516; 452462, 2420442; 452486, 2420421; 452498, 2420398; 452480, 2420334; 452412, 2420247; 452399, 2420223; 452435, 2420209; 452444, 2420139; 452467, 2420112; 452467, 2420069; 452443, 2420047; 452391, 2420052; 452288, 2420126; 452239, 2420219; 452191, 2420271; 452190, 2420397; 452177, 2420428; 452190, 2420478; 452215, 2420500; 452173, 2420538; 452193, 2420597; 452190, 2420654; 452158, 2420722; 452185, 2420755.

(*5*) Bounded by the following eleven points (17 ha, 14 ac): 454202; 2421942, 454138; 2421880, 454209; 2421804, 454226; 2421640, 454083; 2421628, 453679; 2421700, 453652; 2421875, 453771; 2421965, 453915; 2421937, 454078; 2422088, 454202; 2421942.

(*6*) Bounded by the following seven points (1 ha, 4 ac): 454850, 2419801; 454897, 2419736; 454922, 2419684; 454860, 2419633; 454825, 2419667; 454740, 2419694; 454850, 2419801.

(*7*) Bounded by the following five points (1 ha, 2 ac): 452149, 2419675; 452231, 2419635; 452180, 2419556; 452101, 2419583; 452149, 2419675.

(ii) Unit 1B (ha; 17 ac). Unit consists of twenty-one boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 454027, 2418515; 454106, 2418549; 454143, 2418484; 454378, 2418600; 454341, 2418842; 454405, 2418865; 454385, 2418971; 454483, 2418981; 454531, 2418957; 454517, 2418910; 454398, 2418787; 454409, 2418590; 454378, 2418573; 454341, 2418505; 454303, 2418512; 454262, 2418484; 454272, 2418426; 454170, 2418362; 454109, 2418338; 454055, 2418369; 454027, 2418515.

(5) Unit 2—Haula Unit, Island of Kauai (68 ha (168 ac)):

(i) Unit consists of 45 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(ii) Starting on the coastline at approximately coordinates of: 458997, 2422152; follow: 458345, 2422341; 458686, 2422405; 458786, 2422373;

458934, 2422253; 459001, 2422151; 458997, 2422152; 457589, 2420990; 457575, 2420975; 457511, 2420984; 457631, 2421127; 457738, 2421168; 457900, 2421206; 458023, 2421343; 458023, 2421417; 457895, 2421435; 457803, 2421394; 457686, 2421405; 457637, 2421453; 457631, 2421540; 457678, 2421675; 457766, 2421821; 457908, 2421944; 458069, 2421867; 458216, 2421849; 458244, 2421886; 458253, 2421996; 458235, 2422079; 458299, 2422272; 458345, 2422341; 457589, 2420990; to approximately: 457590, 2420991 (coastline); follow coastline to the approximate coordinates of: 458494, 2421794; then follow: 458494, 2421795; 458495, 2421795; 458502, 2421802, 458492, 2421904; 458483, 2421987; 458566, 2422060; 458559, 2422190; 458630, 2422263; 458718, 2422262; 458805, 2422159; 458777, 2422115; 458686, 2422119; 458658, 2422060; 458667, 2421987; 458702, 2421920; to the coastline, approximately at: 458702, 2421919; follow coastline to beginning point: 458997, 2422152.

(6) Unit 3—Puu Keke Unit, Island of Kauai (14 ha (35 ac)):

(i) Unit consists of 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (Nad83):

(ii) Follow the approximate coordinates: 457583, 2422071; 457631, 2422040; 457702, 2421952; 457543, 2421778; 457490, 2421812; 457400, 2421778; 457352, 2421693; 457380, 2421601; 457297, 2421518; 457115, 2421532; 457162, 2421817; 457279, 2421895; 457536, 2422014; 457583, 2422071.

(7) Note: Map 1—Units 1, 2, and 3 follows:

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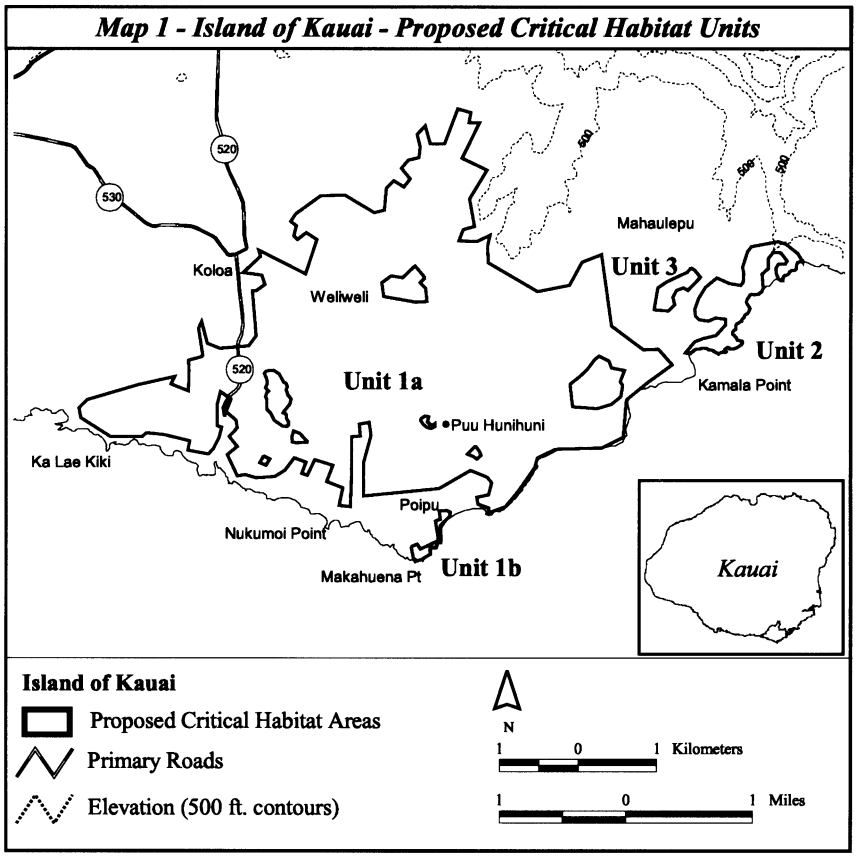

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* * * * *

(h) *Crustaceans.*

Kauai Cave Amphipod (*Spelaeorchestia koloana*)

The critical habitat designation and the primary constituent elements for the Kauai cave amphipod are exactly the same as those of the Kauai cave wolf spider. See the entry in paragraph (g) of this section for the Kauai cave wolf spider. All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave amphipod.

* * * * *

Dated: March 12, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–6801 Filed 3–26–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2048–07; I.D. 021202A]

RIN 0648–AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP), specifically with regard to the straight set of gillnets in the Southeast U.S. Restricted Area in waters off the coasts of Georgia and Florida. The intent of this proposed rule is to prohibit straight sets of gillnets at night from November 15 through March 31, annually, to reduce the risk of entanglement of large whales, including the western North Atlantic right whale. NMFS is also announcing the availability of an Environmental Assessment (EA) and a Regulatory Impact Review (RIR).

DATES: Comments on the proposed prohibition of the straight set of gillnets must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on May 28, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.

Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Katie Moore, NMFS, Southeast Region, 727–570–5312; Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the EA and RIR can be obtained from the ALWTRP Web site: http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of whales by Atlantic lobster trap and gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), interim final (65 FR 80368, December 21, 2000), interim final (67 FR 1142, January 9, 2002), final (67 FR 1133, January 9, 2002), and final (67 FR 1300, January 10, 2002) rules implementing the ALWTRP. Copies of these documents and supporting EAs are available from the contacts noted in the **ADDRESSES** section of this proposed rule.

NMFS issued four biological opinions (BOs) on the multispecies, spiny dogfish, monkfish, and lobster fisheries on June 14, 2001, in accordance with section 7 of the Endangered Species Act (ESA). The BOs concluded that all four of the fisheries jeopardized the continued existence of the western North Atlantic right whale. The reasonable and prudent alternative (RPA) in the June 14, 2001, BOs included additional gear modifications for the northeast lobster trap fisheries and new gear modifications for the mid-Atlantic and southeast gillnet fisheries that are necessary to avoid jeopardizing the continued existence of western North Atlantic right whales. Southeast gillnet gear restrictions identified in this proposed rule address the RPA in an effort to reduce potential entanglements of western North Atlantic right whales.

Take Reduction Planning Activities in 2000 and 2001

Pursuant to section 118 (f)(7)(E) and (F) of the MMPA, NMFS has reconvened the ALWTRT periodically to monitor progress of the ALWTRP and to make recommendations for improvements. During the February 2000 meeting, the ALWTRT split into sub-groups covering the northeast, mid-Atlantic, and southeast areas. The recommendations of the northeast sub-group were addressed by the December 2000 interim final rule. The mid-Atlantic and southeast sub-groups met on August 25, 2000, and July 24, 2000, respectively, and provided meeting summaries with recommendations to the entire ALWTRT for review.

The ALWTRT met as a whole on June 27 and 28, 2001, to review the elements of the RPA required by the four BOs and recommend measures that would not only satisfy the requirements of the ESA and the four BOs, but would also satisfy the requirements of the MMPA. The MMPA provides the goals of reducing takes in commercial fishing operations to below the potential biological removal (PBR) level within 6 months of the ALWTRP's implementation and the achievement of a zero mortality rate within 5 years of ALWTRP implementation. For western North Atlantic right whales, these two goals are essentially the same since the PBR level is defined as zero. Consequently, the ALWTRT concurred that additional entanglement risk reduction is needed to comply with the MMPA.

NMFS published a proposed rule on October 1, 2001 (66 FR 49896), and final rule on January 10, 2002 (67 FR 1300), to amend the ALWTRP per the RPA and the Atlantic Large Whale Take Reduction Team's recommendations. The rule included provisions such as requiring weak links, temporal anchoring, and line diameter restrictions. The proposed rule also included provisions addressing the straight set of gillnets in the Southeast U.S. Restricted Area at night. Though NMFS prepared a thorough analysis of the straight set provision to include in the proposed rule's EA, NMFS accidentally left out the analysis in the EA. In order to ensure that the public had sufficient information to review and analyze the straight set provision in the proposed rule, NMFS removed the

straight set provision from the January 10, 2002, final rule. NMFS is issuing this proposed rule to provide the public adequate time to review and comment on the measure and the EA. The EA and RIR regarding the straight set provision are now available for public review, and NMFS is seeking public comments.

Changes Proposed for the ALWTRP for Gillnet Gear

Regulatory measures discussed by the southeast sub-group included applying northeast gear marking requirements to the southeast area and a restriction on gear deployment methods for non-shark gillnets during the western North Atlantic right whale calving season. The October 1, 2001, proposed rule discussed NMFS' decision to leave the existing gear marking requirement in place for the Southeast U.S. Restricted Area. Additional gillnet restrictions discussed but not adopted by the sub-group included time-area management, net modifications (e.g., weak links), and seasonal restrictions. In the development of the proposed rule, NMFS excluded these preliminary alternatives and several others from detailed analysis, because the alternatives were not considered to be within the scope of the action, technically feasible, or recommended by the ALWTRT.

The gillnet restriction recommended by the southeast sub-group was the prohibition of straight sets of gillnets at night from November 15 through March 31, annually, in the Southeast U.S. Restricted Area, (i.e., unless the exemption under 50 CFR 229.32 (f)(3)(iii), which relates to shark gillnets, applies). The Southeast U.S. Restricted Area consists of those waters from 27° 51′ N lat. (near Sebastian Inlet, FL) to 32° 00′ N lat. (near Savannah, Georgia) extending from the shore outward to 80° W long. Night means any time between one-half hour before sunset and one-half hour after sunrise, as per the ALWTRP (50 CFR 229.2).

A straight set is the deployment of a gillnet in a straight line, as opposed to the deployment of a gillnet in a circular manner, for example, around a school of fish. Both deployment types are currently fished in the proposed management area, the U.S. Restricted Area, which includes a nursery area for mothers and calves. Right whales generally occur in this area from November 15 through March 31. A prohibition during that time-area of the gear types with which the right whale is known to have become entangled would afford additional protection to the concentrations of western North Atlantic right whales. NMFS believes that straight set gillnets deployed during daytime are of very minimal threat to whales. Such gear is retrieved within about one-half hour of every set, and thus the fisher would be on-site in the possible event of an entanglement. Straight sets at night pose a higher level of risk of entanglement to whales than strike sets or straight sets during the day, because fishers are not as actively involved with straight set gear (in comparison to the strike set method used in southeast Atlantic waters), and whales are much more difficult to spot at night due to darkness. Through the proposed rule, NMFS aims to reduce the potential for the entanglement of western North Atlantic right whales in straight set gillnet gear. Due to the gear restrictions, the proposed rule will reduce the likelihood of effort influx into the fishery in the future, thereby further reducing the potential likelihood of entanglements.

Figure 1 shows the boundaries for the Southeast U.S. Restricted Area. Currently the shark gillnet fishery is regulated using these boundaries (50 CFR 229.32 (f)(1)).

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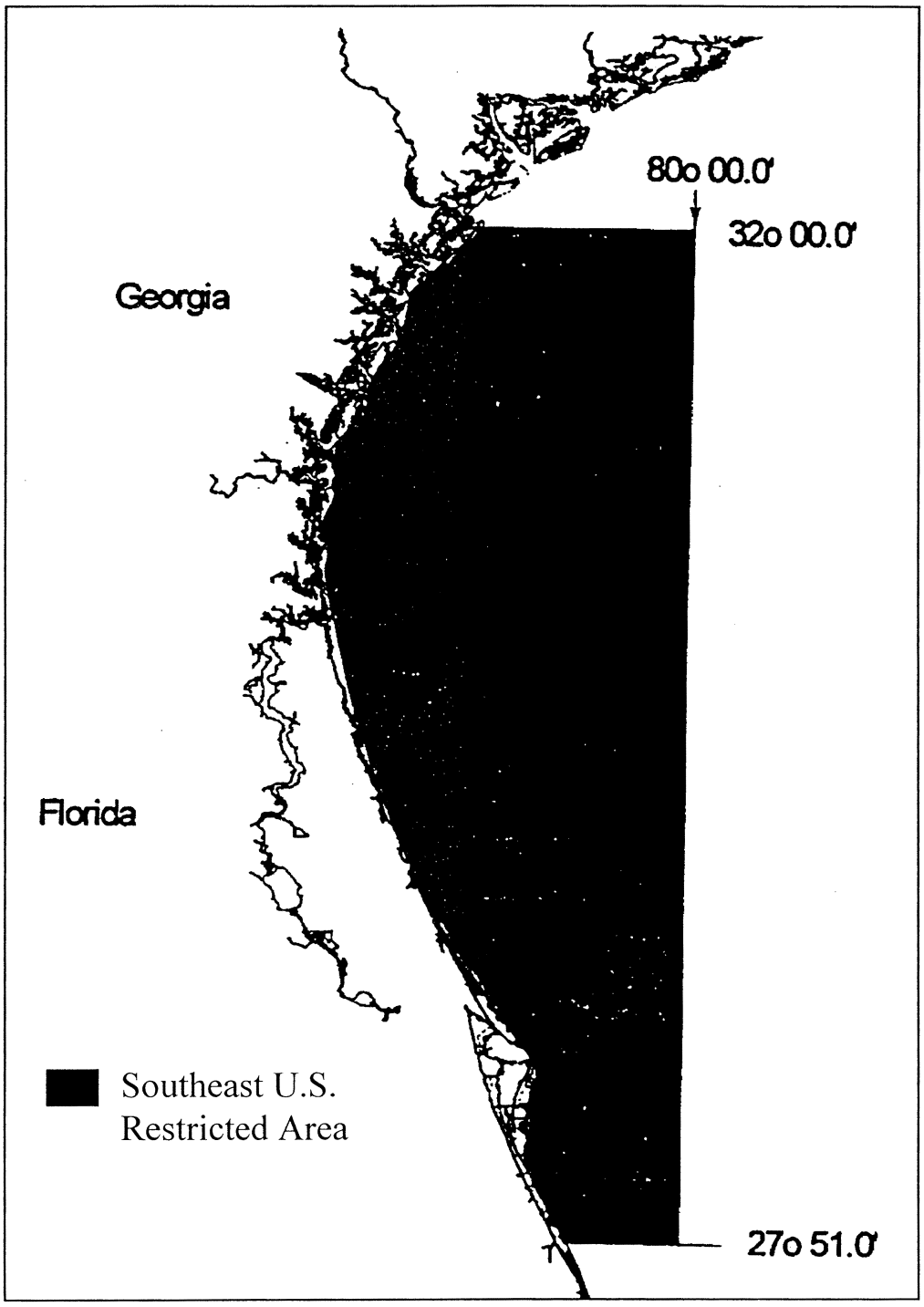
Figure 1



November 15 to March 31 Straight Set Gillnet Restrictions

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Classification

This proposed rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The MMPA provides the statutory basis for the rule. The proposed rule would prohibit the use of straight set gillnets in the Southeast U.S. Restricted Area at night from November 15 through March 31, annually, unless the fishing activity was exempted under 50 CFR 229.32 (f)(3)(iii), which pertains to restrictions on shark gillnet fishing.

The objective of the proposed rule is to eliminate serious injuries or mortalities of western North Atlantic right whales attributable to entanglements with fishing gear and incorporates the time and area during which right whale calves are born.

Available data do not demonstrate that the fishing behavior or methodology restricted by the proposed rule is utilized to a great extent in the restricted area. Virtually all recorded gillnet harvests from this area and season are attributed to runaround gillnets and not straight set gillnets. Less than $133 per year of gross revenues in total can potentially be attributed to the use of straight set gillnets. Further, data on average trip times, soak times, and vessel characteristics indicate that the fishery is primarily prosecuted as a day fishery. Therefore, any direct economic impacts on the fishery will be minimal since the fishery does not substantially operate in the manner being restricted.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of $3.5 million. One hundred two unique entities (vessels or persons) have reported landings in this fishery over the 1997-2000 fishing seasons. Total dockside value of commercial harvests by these entities from all fishing activities and all gears averaged from $16,000 to $24,000 per year over this period. The maximum gross revenues were less than $300,000. All operations would be considered small business entities. Thus, business operations in this fishery consist solely of small business entities.

The determination of significant economic impact can be ascertained by examining two criteria: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All business entities participating in the respective area of the south Atlantic gillnet fishery are considered small business entities. Thus, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The predominant harvest methodology in this fishery is runaround (i.e., strike) gillnets and day trips and not the methodology restricted by the proposed rule. Less than $500, or $133 per year, of reported landings from all participants over the 1997-2000 fishing seasons is potentially attributable to straight set gillnets. Participation ranged from 41 to 62 vessels during this period, for an average of less than $4 per vessel. Whether spread over multiple participants or attributed to a single vessel, it is clear that restricting the use of this gear will not significantly reduce profits for a substantial number of small entities. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals.

Dated: March 19, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(f)(1) through (f)(4), unless the gear or the person with gillnet gear complies with the gear marking requirements specified in § 229.32(f)(2), the requirements for observer coverage as specified in §229.32(f)(3), and the closures, requirements, and other restrictions as specified in 229.32(f)(4).

* * * * *

3. In § 229.32, the heading of paragraph (f) and paragraph (f)(3) are revised; and paragraph (f)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) *Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Observer Area.** * *

* * * * *

(3) *Observer requirement.*No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(4) *Restricted Period, closure and restrictions, and exemption.*

(i) *Restricted period.* The restricted period for the southeast U.S. restricted area is from November 15 through March 31 of the following year, unless the Assistant Administrator revises this restricted period in accordance with paragraph (g) of this section.

(ii) *Closure for shark gillnet gear.*Except as provided under paragraph (f)(4)(iv) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the restricted period.

(iii) *Restrictions for straight sets.*Except as provided for shark gillnet gear under paragraph (f)(4)(iv) of this section, no person may fish with a straight set of gillnet gear at night in the southeast U.S. restricted area during the restricted period. A straight set is defined as a set in which the gillnet is placed in a line in the water column, as

opposed to a circular set in which the gillnet is placed to encircle an area in the water column.

(iv) *Special provision for strikenets.*Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

[FR Doc. 02–7129 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 59
Wednesday, March 27, 2002

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG97

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Holtec International HI–STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment 1 to the Certificate of Compliance (CoC). This amendment would modify the present cask system design to permit a licensee, under a general license, to: add four new multipurpose canisters; add new containers for damaged fuel; add the HI–STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; allow the storage of high-burnup fuel; delete the Technical Specifications for special requirements for the first systems in place and for training requirements and relocate these requirements to the main body of CoC 1014; and allow the storage of selected nonfuel hardware. The amendment would also use revised thermal analysis tools to include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels. In addition, modifications would be made applicable to CoC conditions and sections of Appendix A and Appendix B to the CoC to reflect the changes.

DATES: Comments on the proposed rule must be received on or before April 26, 2002.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Certain documents related to this rulemaking, as well as all public comments received on this rulemaking, may be viewed and downloaded electronically via the NRC's rulemaking website at *http://ruleforum.llnl.gov.* You may also provide comments via this website by uploading comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; email CAG@nrc.gov.

Certain documents related to this rule, including comments received by the NRC, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML013330457. If you do not have access to ADAMS or if their problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, email jmm2@nrc.gov, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 1 to CoC No. 1014 and does not include other aspects of the Holtec HI–STORM 100 cask system design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on June 10, 2002. However, if the NRC receives significant adverse comments by April 26, 2002, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1014.

Initial Certificate Effective Date: June 1, 2000.

Amendment Number 1 Effective Date: June 10, 2002.

SAR Submitted by: Holtec International.

SAR Title: Final Safety Analysis Report for the HI–STORM 100 Cask System.

Docket Number: 72–1014.

Certificate Expiration Date: June 1, 2020.

Model Number: HI–STORM 100.

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 02–7321 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is proposing to amend its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

DATES: Comments must be received on or before May 28, 2002.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to *reg.comments@pbgc.gov.* Copies of comments may be obtained by writing the PBGC's Communications and Public Affairs Department (CPAD) at Suite 240 at the above address or by visiting or calling CPAD during normal business hours (202–326–4040).

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as ''a board consisting of three PBGC officials.''

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this proposed rule would authorize any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC would continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

The PBGC invites public comment on this proposal.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from the notice and public comment and delayed effective date requirements of section 553 of the Administrative Procedure Act. However, because the PBGC wishes to provide an opportunity for public comment, this rule is being published as a proposed rule.

Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. *See* 5 U.S.C. 601(2), 603, 604.

This rule is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4003 as follows.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Add new § 4003.61 to read as follows:

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

Issued in Washington, DC, this 20th day of March, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–7297 Filed 3–26–02; 8:45 am]

BILLING CODE 7708–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–367; MM Docket No. 02–31, RM–10351]

Radio Broadcasting Services; Memphis, TN, Olive Branch & Horn Lake, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc. the reallotment of Channel 239A from Olive Branch, Mississippi, to Horn Lake, Mississippi, and modification of the license for Station WOTO at coordinates 35–04–19 and 89–59–13. To ensure local service at Olive Branch, Clear Channel has requested the reallotment of Channel 266C1 from Memphis, Tennessee to Olive Branch, Mississippi, and modification of the license for Station KJMS at coordinates 35–08–01 and 90–05–38. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 239A to Olive Branch and Channel 266C1 at Horn Lake.

DATES: Comments must be filed on or before April 8, 2002, and reply comments on or before April 23, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson L.L.P., 555—13th Street, NW., Washington, DC 20004–1109.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–31, adopted February 6, 2002, and released February 15, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 239A and adding Channel 266C1 at Olive Branch and by adding Horn Lake, Channel 239A.

3. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 266C1 at Memphis.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7190 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–565, MM Docket No. 02–49, RM–10220]

Radio Broadcasting Services; Worcester and Westborough, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Entercom Boston License, LLC, proposing the reallotment of Channel 297B from Worcester to Westborough, Massachusetts, as the modification of Station WAAF(FM)'s license accordingly. Channel 297B can be reallotted to Westborough in compliance with the Commission's minimum distance separation at without the imposition of a site restriction petitioner's presently licensed site. The coordinates for Channel 297A at Westborough are 42–18–11 North Latitude and 71–53–52 West Longitude. Since Westborough is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been requested. In accordance with Section 1.420(i) of the

Commission's Rules, we will not accept competing expressions of interest for the use of Channel 297A at Westborough, Massachusetts.

DATES: Comments must be filed on or before April 29, 2002, reply comments on or before May 14, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elizabeth N. Alexander, Leventhal, Senter & Lerman, P.L.L.C., 2000 K Street, NW, Suite 600, Washington, DC 20006–1809 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02–49, adopted February 27, 2002, released March 8, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Channel 297B at Worcester; and by adding Westborough, Channel 297B.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02–7189 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC–7; Notice No. 4]

RIN 2130–AA68

Freight Car Safety Standards: Maintenance-of-Way Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This document terminates the rulemaking action initiated in FRA Docket No. RSFC–7. In its Notice of Proposed Rulemaking (NPRM), FRA proposed an amendment of the Freight Car Safety Standards, which currently do not apply to maintenance-of-way (MOW) equipment if stenciled and not used in revenue service. The NPRM proposed an additional 20 miles per hour (mph) speed restriction on MOW equipment in order for it to be operated without complying with the Freight Car Safety Standards. Termination of this rulemaking is based on consideration of the comments submitted in response to the NPRM, the need to consider and evaluate more current safety and accident data related to MOW equipment, and FRA's desire to potentially reevaluate and develop alternative approaches to the issues, if necessary, based on current fact-based data.

FOR FURTHER INFORMATION CONTACT: Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop 10, Washington, D.C. 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION: In March of 1994, FRA issued an NPRM proposing an amendment to the Freight Car Safety Standards (FCSS), codified in 49 CFR Part 215, to make all maintenance-of-way (MOW) equipment subject to the FCSS except such equipment stenciled MOW equipment, not used in revenue service, and restricted to a speed of less than 20 miles per hour (mph). *See* 59 FR 11238 (March 10, 1994). Under the existing regulations, the exception for MOW equipment requires only that it be stenciled and not used in revenue service. Thus, FRA proposed an additional restriction related to the operation of MOW equipment not in compliance with the FCSS, requiring such equipment to be operated at a speed of less than 20 mph.

The preamble to the NPRM discussed the basis of FRA's concerns regarding the need for the proposed speed restriction on MOW equipment. The preamble noted that FRA conducted three surveys between 1983 and 1986 on MOW equipment which resulted in a high percentage of such equipment being found with conditions not in compliance with the FCSS. *See* 59 FR 11239. It should be noted that the conducted surveys disclosed that the percent of MOW equipment found with defective conditions under the FCSS decreased with each successive survey. *See id.* The preamble also discussed a train derailment which occurred on July 18, 1983, in Crystal City, Missouri, the investigation of which indicated that a MOW vehicle with a cracked and displaced centerplate was a major contributing cause to the accident. The NTSB estimated the damages related to this accident at more than $1 million and issued the following recommendation to FRA:

Require that MOW cars meet the Railroad Freight Car Safety Standards or, in the alternative, impose operating restrictions on MOW cars being moved in revenue freight trains to compensate for the actual mechanical conditions of the cars. (R–84–10) (February 22, 1984).

In November of 1994, NTSB closed this 10-year-old recommendation and has not reissued a similar recommendation. The preamble to the NPRM also discussed the potential impact of AAR's 1994 change to its interchange rules, prohibiting the interchange of cars equipped with friction bearings. As a large number of MOW cars were equipped with friction bearings, FRA raised concerns regarding whether the industry's prohibition on interchanging such equipment would result in a reduction in the number of locations on the railroads where personnel are capable of performing frequent inspections and lubrication of these components.

FRA's economic evaluation developed in connection with the NPRM identified the costs and benefits related to the proposed 20-mph speed restriction on

MOW equipment not in compliance with the FCSS. The evaluation identified approximately $1.1 million in safety benefits based on a review of FRA's accident data between 1980 and mid-1987. This review identified 26 accidents caused by MOW equipment which resulted in approximately $1.1 million in damage to railroad property and involved no injuries or fatalities. The evaluation also estimated the costs associated with the proposed restriction based on the assumption that railroads would repair existing equipment to meet the FCSS rather than operate MOW equipment pursuant to the proposed 20-mph restriction. The evaluation identified a 10-year Net Present Value cost associated with the proposed restriction of approximately $4.4 million. The estimate determined that approximately $3.3 million would be required to bring existing MOW equipment into compliance with the FCSS and that an additional $330,000 a year would be required to maintain the equipment consistent with the requirements of the FCSS.

FRA received written comments from six parties raising various concerns related to the additional restriction proposed in the NPRM. These commenters included:

Association of American Railroads (AAR),
American Short Line and Regional Railroad Association (ASLRRA),
Brotherhood of Railway Carmen, Division of the Transportation Communications International Union (BRC),
Brotherhood of Maintenance of Way Employes (BMWE),
Duluth, Missabe and Iron Range Railway Company (DMIR), and
Norfolk Southern Corporation (NS).

AAR, ASLRRA, and NS all commented that FRA failed to establish a significant safety rationale for proposing the costly operating restrictions on MOW equipment. These commenters did not believe that any change to the FCSS was warranted. AAR objected to the age of the data used by FRA to justify the proposal in 1994 and noted that the data itself showed that the percentage of MOW equipment containing defective conditions under the FCSS was declining into the mid-1980s. AAR also noted that none of the accidents relied on by FRA involved any injury or fatality. AAR further contended that MOW equipment was sufficiently covered by the safety appliance and power brake regulations contained in 49 CFR parts 231 and 232 and that FRA had not established that such equipment comprised a safety threat.

AAR and NS also asserted that FRA's economic evaluation was seriously flawed because it failed to consider the impact of the proposal on MOW equipment over 50 years old. These commenters contended that the proposal to apply the FCSS to MOW equipment would significantly impact MOW equipment which is more than 50 years old because § 215.203 imposes strict limits on the use of such equipment. AAR asserted that the impact on 50-year-old MOW equipment would constitute a significant ''opportunity cost'' to the industry. AAR and NS contended that the cost to replace this older equipment would be in excess of $220 million.

AAR also claimed that FRA's economic analysis significantly underestimated the maintenance costs involved with maintaining MOW equipment in accordance with the FCSS. AAR noted that FRA only assumed $41 per car annually to maintain the equipment consistent with the requirements of the FCSS. AAR asserted that the annual maintenance cost would likely be closer to $300 per car. Thus, AAR claimed that FRA's cost estimates should have been increased by approximately $12 million based on this factor alone.

AAR and NS claimed that FRA could apply the FCSS to MOW equipment in a manner which was much less costly than that proposed by FRA. These commenters recommended that any application of the FCSS to MOW equipment should provide an exception from § 215.203 for cars more than 50 years old. They also recommended an exemption for emergency and specialized MOW equipment (pile drivers, track geometry cars, snow plows, etc.) and suggested that a significant transition period, at least five years, be provided to allow the industry time to upgrade existing equipment. In a second set of comments (August 4, 1995) submitted in response to FRA questions, AAR suggested a further alternative to the proposed 20-mph speed restriction for improving the mechanical state of existing MOW equipment. This alternative involved the creation and application of a System Safety Quality Assurance (SSQA) performance standard based on train accidents per million-train-miles. Under this approach, a railroad's failure to operate within the established SSQA standard would result in FRA's imposition of certain equipment and operational requirements on that railroad, provided there is a link between the imposed requirements and the safety problem.

Although the ASLRRA did not believe any change to part 215 was justified, it recommended that if FRA determines a speed restriction is necessary, that the restriction should be 25 mph rather than 20 mph as proposed. ASLRRA stated that 25 mph would be consistent with operations over FRA Class 2 track and would reduce the burden being imposed on many short line operations because a larger number of such railroads already operate at restricted speeds. ASLRRA asserted that it would be a significant expense for most smaller railroads to bring MOW equipment into compliance with part 215 and, thus, most smaller railroads would comply with any imposed speed restriction. Furthermore, a 25-mph speed limit would avoid confusion with existing federal track standards and would reduce the number of rules with which small railroads must deal.

Comments received from the DMIR, in response to the NPRM, contended that there would be a significant impact on its operation if self-propelled MOW equipment (ballast regulators, tampers, high-rails, yard cleaners, motor cars, etc.) were required to comply with the requirements contained in the FCSS as proposed. DMIR asserted that virtually none of its self-propelled MOW equipment operates in revenue trains and, thus, did not pose the hazard FRA was attempting to address in the NPRM. Consequently, DMIR believed there was no safety benefit in requiring self-propelled MOW equipment to comply with the requirements of the FCSS when operated over 20 mph.

Comments received from BMWE and BRC supported the proposal to the extent that all MOW equipment should be covered by the provisions contained in the FCSS. These commenters generally contended that all equipment operated by the railroads should be required to comply with the FCSS whether or not they are used in revenue service, including equipment used solely in work train service. BRC believed that the proposed 20-mph speed restriction would not improve safety because most MOW equipment is not safe to operate at any speed if it does not comply with the FCSS. They asserted that no operating restrictions justify the use of equipment not in compliance with part 215.

In April 1996, subsequent to the closing of the comment period on the NPRM in this proceeding, FRA established the Railroad Safety Advisory Committee (RSAC), which is composed of representatives from railroad management, railroad labor, FRA, and other interested organizations. RSAC is designed to cooperatively address safety

problems based upon agreed-upon facts and, where regulation appears necessary, recommend to FRA regulatory options to implement the needed solutions. In September of 1997, FRA proposed that the RSAC accept the task of recommending revisions to part 215 as it pertains to MOW equipment. Had RSAC accepted the task, FRA would have withdrawn the NPRM to permit RSAC to work from a clean slate. The full RSAC could not reach consensus regarding acceptance of the task and, thus, the RSAC rejected the task of revising part 215. Many members of the RSAC did not believe that the issues raised in this proceeding involved a safety priority when compared to other tasks being addressed by the committee. In a late submission to the docket (January 1998), BMWE urged FRA to pursue this issue through traditional rulemaking despite the RSAC's rejection of the task. The BMWE further recommended that an additional amendment be made to part 215 which would prohibit employees or personnel from riding on, occupying, or being transported in equipment not meeting the requirements contained in part 215. BMWE believed this restriction should be imposed on all freight cars including those used exclusively in MOW service. Of course, such requirements would be well beyond the limited scope of the NPRM. After RSAC's rejection of the task, FRA allowed this proceeding to remain open while the agency pursued much higher regulatory priorities, including passenger equipment standards and revised freight power brake rules.

After consideration of all the comments and information noted above and based on general observations made by FRA during the last eight years with regard to MOW equipment and the applicability of part 215 to such equipment, FRA believes that a number of conclusions can be drawn. FRA agrees that the data relied on when developing the NPRM in this proceeding is dated and likely does not represent the condition of MOW equipment currently being operated by most railroads. The data relied on when developing the NPRM was gathered between 1980 and 1987. Thus, much of the data, both inspection and accident, is close to or more than two decades old. Since publication of the NPRM, FRA believes that railroads have made a concerted effort to bring most MOW equipment closer to compliance with the requirements contained in part 215, particularly MOW equipment regularly operated in revenue trains. Moreover, since 1980, FRA is not aware of any accident or incident involving MOW equipment resulting in injury or fatality in which a contributing cause of the accident or incident was a condition not in compliance with part 215 on a piece of MOW equipment. Consequently, while not intending to imply that there is no need to address the mechanical condition of MOW equipment currently in use on the nation's railroad's, FRA does believe that MOW equipment is maintained in better condition, from a mechanical perspective, than it was 15 to 20 years ago.

FRA further believes that any sustainable approach to the issues raised in this proceeding must be based on current, fact-based data which accurately captures both the safety need and the economic consequences of any course of action. Just as the safety benefits associated with this rulemaking have likely declined over time, similarly the costs of compliance have likely declined, as well. Further, many of the costs of concern to the railroads might very well be mitigated by continuing to except such equipment from the 50-year requirement. However, FRA recognizes that such assessments take considerable time and resources. In addition to simply gathering data, the agency must also determine whether the gathered data establishes a need for regulatory action and the form of that action. FRA believes that a rulemaking docket should not be left open and pending indefinitely while the agency determines whether or how such data gathering will be pursued or evaluated. Moreover, it must be stressed that MOW equipment remains subject to the FCSS if it is used in revenue service or is not stenciled and, under all circumstances, is subject to the federal regulations applicable to safety appliances and power brakes contained in parts 231 and 232, respectively. Thus, MOW equipment is continually inspected by railroads and monitored by FRA for compliance with those requirements as well as any other condition that may constitute an imminent safety risk to railroad employees or the public at large.

In addition to FRA's concerns regarding the data relied on in this proceeding, FRA also believes that the NPRM did not fully consider all of the potential economic and operational impacts that the proposed 20-mph speed restriction would have on the industry. FRA believes that several commenters in this proceeding raise valid concerns related to the impact of the proposal on MOW equipment over 50 years in age and the potential impact to the operation of a number of revenue trains. FRA also notes that a number of alternative approaches to the issues were provided in the comments received in response to the NPRM. Furthermore, several commenters recommended that additional restrictions be placed on certain MOW equipment or raised issues which were not fully explored or discussed in the NPRM which relate to the operation of MOW equipment. Therefore, should FRA develop fresh data and analysis which establishes a need for regulatory action, the content of that action is likely to be significantly different from that proposed in this NPRM and may focus on a variety of issues not contemplated in the current proceeding. Consequently, FRA believes that continuance of the present proceeding is neither productive nor useful at this time.

Termination of Rulemaking

Based on the foregoing discussion, FRA has decided to terminate this rulemaking. While we note that this rulemaking has been useful in raising both FRA's and the industry's awareness of the issues related to the operation and safety of MOW equipment, FRA believes that it is not prudent to pursue this rulemaking, based on its present content, at this time. FRA will continue to monitor the condition and operation of MOW equipment and will assess the need, from a safety perspective, to pursue either regulatory or other less formal methods to ensure the safety of both railroad employees and the public as it relates to the use and operation of this equipment. In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, DC on March 22, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7364 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No. NHTSA–2002–11392]

RIN 2127–AI73

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 1999 calendar year before October 25, 2002. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than May 28, 2002. Insurers listed in the appendices are required to submit reports on or before October 25, 2002.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit your comments in writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. You may also submit written comments to the docket on a computer diskette. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, by electronic mail *hspinner@nhtsa.dot.gov.* Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR part 544, the following insurers are subject to the reporting requirements:

(1) Issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and

(3) Rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

II. Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 24, 2001 (66 FR 53731). Based on the 1999 calendar year data market

shares from A.M. Best, we propose to remove American Financial Group from Appendix A and to add Great American P & C Group and Metropolitan Life Auto & Home Group to Appendix A.

Each of the 20 insurers listed in Appendix A is required to file a report before October 25, 2002, setting forth the information required by part 544 for each State in which it did business in the 1999 calendar year. As long as these 20 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1999, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1999 calendar year data for market shares from A.M. Best, we propose to remove Concord Group Insurance Companies (Vermont) from Appendix B.

The eight insurers listed in Appendix B are required to report on their calendar year 1999 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2002, and set forth the information required by part 544. As long as these eight insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1999, NHTSA proposes to remove A T & T Automotive Services, Inc. from Appendix C and to add Ford Rent-A-Car System to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1999 no later than October 25, 2002, and set forth the information required by part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

III. Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2001 (see *http://www.bls.gov/cpi*), the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $88,500 for any insurer added to Appendix A, $35,420 for any insurer added to Appendix B, and $10,219 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove one company and add two companies; for Appendix B, the agency would remove one company; and for Appendix C, the agency would remove one company and add one company. The agency estimates that the net effect of this proposal, if made final, would be $53,080 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

6. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading, at the beginning, of this document to find this action in the Unified Agenda.

7. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language

includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the proposal clearly stated?
- Does the proposal contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the proposal easier to understand?

If you have any responses to these questions, you can forward them to me several ways:

a. *Mail*: Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590;

b. *E-mail: hspinner@nhtsa.dot.gov;* or

c. *Fax*: (202) 493–2290.

IV. Comments

Submission of Comments

1. How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing our rules, NHTSA tries to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on our proposal, new data, a discussion of the effects of this proposal on you, or other relevant information. We welcome your views on all aspects of this proposed rule. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning clearly.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you derived the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Include the name, date, and docket number with your comments.

2. How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not exceed 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments concisely. You may attach necessary documents to your comments. We have no limit on the attachments' length.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filling the document electronically.

3. How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you, upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will mail the postcard.

4. How Do I Submit Confidential Business Information?

If you wish to submit any information under a confidentiality claim, you should submit three copies of your complete submission, including the information you claim as confidential business information, to the Chief Counsel, Office of Chief Counsel, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter addressing the information specified in our confidential business information regulation (49 CFR part 512).

5. Will the Agency Consider Late Comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider, in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

6. How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above, in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number was ''NHTSA 1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. The ''pdf'' versions of the documents are word searchable.

V. Conclusion

Based on the foregoing, we are proposing to amend Appendices A, B, and C of 49 CFR 544, insurer reporting requirements.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2002 will contain the required information for the 1999 calendar year).

* * * * *

3. Appendix A to Part 544 is proposed to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American International Group
California State Auto Association
CGU Group

CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Great American P & C Group[1]
Hartford Insurance Group
Liberty Mutual Insurance Companies
Metropolitan Life Auto & Home Group[1]
Nationwide Group
Progressive Group
SAFECO Insurance Companies
St. Paul Companies
State Farm Group
Travelers PC Group
USAA Group

4. Appendix B to Part 544 is proposed to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is proposed to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Resources International)
Associates Leasing Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car System[1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

Issued on: March 21, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 02–7367 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–59–P

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2002.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH01

Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Kauai Cave Wolf Spider and Kauai Cave Amphipod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Kauai cave wolf spider (*Adelocosa anops*) and the Kauai cave amphipod (*Spelaeorchestia koloana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat consists of three units whose boundaries encompass an area of approximately 1,697 hectares (ha) (4,193 acres (ac)) on the island of Kauai, Hawaii. Critical habitat identifies specific areas that are essential to the conservation of a listed species and that may require special management considerations or protection.

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise or further refine critical habitat boundaries prior to final designation based on new information received during the comment period.

DATES: We will accept comments until the close of business on May 28, 2002. Requests for public hearing must be received by May 13, 2002.

ADDRESSES: Comment submission: If you wish to comment, you may submit your comments and materials as follows:

(1) You may submit written comments and information to Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

(2) You may hand-deliver written comments to our Pacific Islands Fish and Wildlife Office at the address given above.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the Pacific Islands Fish and Wildlife Office in Honolulu at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Fish and Wildlife Office, at the above address (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the numerous shoals and atolls of the northwestern Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a hot spot in the earth's crust located near the current southeastern coast of the island of Hawaii (Stearns 1985). Kauai is the oldest of the main islands, with most of its land mass being formed between 3.6 and 5.6 million years ago (MYA) from a single, large shield volcano, now represented by the Alakai Plateau and adjacent ridges. Younger, secondary eruptions occurred over the eastern portion of the island as recently as the Pleistocene era (approximately 0.6 MYA). Due to the age of the island, the terrain is heavily eroded, with steep water-carved valleys and gulches characterizing the slopes of the Alakai Plateau and other isolated ridges. The Alakai Plateau is one of the wettest places on earth, receiving an average of 1.3 meters (m) (444 inches (in)) of rain annually (Juvik and Juvik 1998). Rain is delivered to the island by prevailing trade winds which come from the northeast. Southern and southwestern portions of the island lie in the rain shadow of the Alakai Plateau, ridges, or other uplands, and receive relatively little rain (22 to 91 centimeters (cm) (9 to 36 in) per year in Waimea Town) (NOAA 1990–1999).

The Koloa District lies in the southeast corner of Kauai and includes the town of Koloa and the community and resort area of Poipu. The area is dry to mesic (moderate rainfall), receiving an average of 107 to 223 cm (42 to 88 in) of rain annually. Although the Koloa District includes upland areas such as ridge lines derived from the Alakai Plateau and Haupu ridge, most human-occupied areas lie between sea level and about 183 m (600 ft) in elevation.

The Koloa area is composed of the youngest rock on Kauai, the Koloa Volcanics (MacDonald *et al.* 1960;

Langenheim and Clague 1987), with flows dating from between 0.6 and 1.4 million years. Younger, consolidated marine deposits and lithified sand dunes lie on top of some coastal portions of the older Koloa Volcanics. The great age and subsequent weathering that has occurred on Kauai has resulted in most lava tubes having been collapsed or filled with sediments (MacDonald *et al.* 1960; Howarth 1973; Berger *et al.* 1981; Howarth 1987), relative to younger islands (e.g., Hawaii) where lava tubes are common features (Howarth 1983a). It is only in portions of the Koloa District, with its younger, cave-bearing rock, relative lack of developed soils, and minimal rainfall and subsequent sedimentation, that caves are known to be relatively common features on Kauai (Howarth 1981).

Kauai Cave Wolf Spider

The Kauai cave wolf spider (*Adelocosa anops*) is a member of the wolf spider family (Lycosidae). Spiders in this family are characterized by a distinctive eye pattern, including two particularly large eyes located within the middle row of eight eyes (Foelix 1982). While wolf spiders are typically visual predators, the most conspicuous physical character of the Kauai cave spider is its complete lack of eyes. This character is unique among wolf spiders and, in part, provides justification for the recognition of a separate genus for this taxon (Gertsch 1973). A few species of wolf spider have reduced eyes, including another cave-adapted species on the island of Hawaii, but only in the Kauai cave wolf spider are the eyes entirely absent. Adults of the Kauai cave wolf spider are about 12.7 to 19.0 millimeters (mm) (0.5 to 0.75 in) in total body length with a reddish-brown carapace, pale to silvery abdomen and beige to pale orange legs. The hind margin of each chelicera (biting jaw) bears three large teeth, two situated basally, and the third at the outer end of the chelicera. The tibiae of the two front pairs of legs have four pairs of ventral spines, and the tarsi (ultimate segments) and metatarsi (penultimate segments) of all legs bear unusually long, silky, and shiny trichobothria (sensory hairs) (Gertsch 1973).

Dr. Frank Howarth, of the Bishop Museum, first discovered the Kauai cave wolf spider in Koloa in 1971, and it was formally described by Willis Gertsch of the Bishop Museum (Gertsch 1973). The Kauai cave wolf spider is a predator, and although blind, can detect the presence of potential food items through chemo-tactile sensory organs and actively stalks its prey (Howarth 1983a). Although predation has not been observed in the field, the spider probably feeds on the Kauai cave amphipod, other cave-inhabiting arthropods, and alien species of arthropods that enter the cave system. Compared to most wolf spiders, the reproductive capacity of the Kauai cave wolf spider is extremely low, with only 15 to 30 eggs produced in each egg sac (Wells *et al.* 1983; Howarth 1991). Newly hatched spiderlings are unusually large for wolf spiders, and are carried on the back of the female for only a few days (Howarth 1991; Howarth and Mull 1992). Other species of wolf spider may have in excess of 100 offspring per clutch and the newly hatched spiderlings are relatively small (Foelix 1982; Howarth 1991; Howarth and Mull 1992).

Kauai Cave Amphipod

The Kauai cave amphipod (*Spelaeorchestia koloana*) was discovered in some of the same caves as the Kauai cave wolf spider in 1971 (Bousfield and Howarth 1976). Because of the unusual attributes of a highly reduced pincher-like condition of the first gnathopod (thoracic appendage) of the amphipod, and the second gnathopod being mitten-like in both sexes, this taxon is placed in its own unique genus (*Spelaeorchestia*) within the family Talitridae (Bousfield and Howarth 1976). This species is also distinctive in its lack of eye facets and pigmentation, and extremely elongate, spiny, post-cephalic appendages. Adult cave amphipods are 7 to 10 mm (0.25 to 0.4 in) in length with a slender, laterally compressed body and a hyaline cuticle, giving it a shiny, translucent appearance. The second pair of antenna are slender and elongate, with the flagellum (slender outer part of the antenna) only slightly longer than the peduncle (narrow stalk attaching to the body). Peraeopods (abdominal walking legs) are very elongate, with slender, attenuated claws. All pleopods (swimming legs) are reduced, with branches vestigial or lacking. Uropods (tail-like appendages) 1 and 2 have well-developed pre-peduncles, and brood plates in the mature female are vestigial or entirely absent (Bousfield and Howarth 1976).

The Kauai cave amphipod is a detritivore and has been observed feeding on the roots of *Pithecellobium dulce* (Manila tamarind) and *Ficus* sp. (fig), rotting roots, sticks, branches, and other plant material washed into, or otherwise carried into the caves, as well as the fecal material of other arthropods. In large cave passages, most individuals are found in association with roots or rotting plant debris. When disturbed, this cave amphipod typically moves slowly away rather than jumping like other amphipods. Nothing is known of the reproductive biology of this amphipod, but the vestigial brood plates of the female suggest they give birth to a small number of large offspring (Poulson and White 1969; Bousfield and Howarth 1976).

Cave Habitat

Cave habitats have a high degree of zonation which plays a major role in the distribution of cave-dwelling organisms. Howarth and Stone (1990) recognize five distinct zones, not all of which are always present within any one cave. The first zone, the ''entrance zone,'' typically receives large amounts of solar radiation and is often vegetated with surface plants. Within the second zone, the ''twilight zone,'' ambient light levels decrease as one moves away from the entrance and photosynthesizing plants that may be present in the entrance decline. The third zone is referred to as the ''transition zone.'' The transition zone lacks light penetrance from the entrance, but other outside factors still greatly influence the cave habitat (e.g., ample air movement and daily temperature fluctuations). All of the above described zones (entrance, twilight, and transition) are typically influenced by surface conditions, daily cycles of warming and cooling, surface humidity, and a fair degree of air exchange occurring between these zones and surface habitats over relatively short periods of time (daily). The fourth cave zone, the ''dark zone,'' typically exhibits a sharp climatological change from the three previously described zones. The dark zone largely lacks daily air exchange with the surface and the three previously described zones. The relatively constant conditions encountered in the dark zone are often the result of a narrowing cave passage or low ceiling(s) that serve as physical barriers that restrict air exchange with other cave zones, or may be due to an up-slope orientation into a dead-end passage that traps warm, moist air. While the dark zone may undergo drastic changes in temperature and relative humidity, this more often is associated with seasonal rather than diurnal changes in air temperature. As a result of this, dark zones are seasonally stable in their micro-climatic conditions, remaining warm and humid during warm seasons. The final recognized cave zone is that of the ''stagnant'' zone (Howarth and Stone 1990). This zone lies deeper than the dark zone, receiving significantly less air exchange. As a consequence, the

composition of gasses within this last zone is often largely controlled by the decomposition of organic matter and maintains high concentrations of carbon dioxide and low concentrations of oxygen. While considered inhospitable by human standards, field observations have indicated that obligate cave-dwelling species are highly tolerant of these conditions and many may, in fact, thrive in the stagnant air zone of caves (Howarth and Stone 1990).

Cave habitats almost always contain small voids, cracks, and passages (mesocaverns) that cannot be accessed by researchers (Howarth 1983b), but remain readily accessible (or preferred) by small troglobites (obligate cave-dwelling animals). Although such voids and cracks can occur in any zone and possess characteristics of each of the five zones, they frequently represent areas of reduced air flow and consequently are most similar to the dark and stagnant air zones. Passages and mesocaverns in limestone caves can form or be destroyed at almost anytime in the life of the cave, depending on the chemical characteristics of the rock and normal geologic processes. Limestone caves often become larger over time as acidic waters from the surface dissolve away the calcium carbonate bedrock. Since water flow enlarges and creates caves in limestone by solution, subterranean voids do not fill through erosion. If any do, the water quickly finds a different path and enlarges a new void. Limestone caves grow deeper as the water table sinks and the surface over the caves dissolves away. Limestone caves improve with age because, although individual voids and passages may be short-lived, limestone caves continuously reform so that habitat can remain suitable for very long time spans. Caves derived from lava tube systems are fundamentally different from limestone in that basalt is not as readily soluble. Hence, lava tube passages and mesocaverns do not typically dissolve away and become larger (formed), but are subject to filling with sediments (destroyed).

The tendency for Hawaiian basalt to shrink and crack upon cooling results in younger lava flows having an abundance of mesocaverns throughout their structure that may serve as habitat or as corridors between habitats. However, the cave-building process typically stops some time after cave and crack formation, and is replaced by the cave-filling processes as weathering and sedimentation begin filling in mesocaverns and passages. On younger islands, the abundance of mesocaverns may allow cave animals to move among and between larger, adjacent lava tubes (Berger *et al.* 1981; Howarth 1991). However, because these smaller voids become filled with erosional sediment in older flows like the Koloa Volcanics, and as a result of surface disturbance (Mueller-Dombois and Howarth 1981; Adam Asquith, Service, *in litt.,* 1994a), it is less likely that the Kauai cave animals can readily move among separate lava tubes or other cave systems. Therefore, this places great importance on protecting the remaining undeveloped lands since they now represent only a fraction of habitat and interhabitat corridors where the cave animals can readily move between areas that were present before modern (i.e., post-European colonization) habitat modification.

Cave ecosystems are typically regarded as being food limited, and in most caves, the resident food-web communities require food input which is derived from surface systems based upon a photo-autotrophic (i.e., photosynthesizing plants) food base (Culver 1986). Nutrients may enter caves via subterranean streams or other surface runoff; as guano from bats, birds, rodents or other cave visitors or residents; or from plant roots that penetrate the cave (Culver 1986). Of these methods, roots from surface plants are the primary means by which Hawaiian caves receive nutrient input (Howarth 1973). Protection and/or restoration of surface plant communities is, therefore, an extremely important consideration for cave conservation in Hawaii, as it is elsewhere (Culver *et al.* 2000). Factors or activities that impact or modify surface vegetation over caves (e.g., fire, replacement of native or other perennial vegetation with grasses or some non-native plants) can damage or destroy the underlying cave community.

Adaptations of Troglobitic Animals

As discussed in the species descriptions of the Kauai cave wolf spider and cave amphipod, troglobites typically possess specialized anatomical characters that represent adaptations to life in the cave environment. Such anatomical adaptations include enlarged and/or elongate tactile-sensory appendages (e.g., legs or other appendages, antennae), and the lack of, or reduced, pigmentation and/or eyes (Barr 1968). Less obvious adaptations are also present in the physiology of troglobites and this has the potential to restrict their distribution within various cave zones (Huppop 1985). Laboratory studies with Hawaiian crickets were conducted that compared the abilities of closely related surface and cave-dwelling forms (*Caconemobius* spp.) to cope with desiccation (Ahearn and Howarth 1982). Surface-dwelling species exhibited considerably lower evaporation/desiccation rates than did the troglobitic species, and in one case, the surface species became dehydrated at half the rate of its cave-inhabiting relative. This low desiccation threshold largely confines these troglobites to the high-humidity environment of the deeper portions of caves, the dark and stagnant air zones. While such tests have not been conducted on the Kauai cave species, a logical assumption is that they have similar humidity tolerances, and this has been supported by field studies and observations conducted in the Kauai caves (see below). Similar adaptations in other troglobitic faunas (Vandel 1965; Barr 1968; Huppop 1985) support the universality of these traits in troglobitic animals.

Given the great vulnerability of troglobites to desiccation, adjacent mesocavern habitats will contain appropriate microclimate conditions and provide habitat or serve as refugia for troglobites when conditions in the main cave passages become drier or otherwise less accommodating. For example, during a previous survey of one cave of the Koloa area, the Kauai cave amphipod was not observed (Miura and Howarth 1978). However, on a subsequent survey, the floor of a small, dead end passage was saturated with 40 liters (10 gallons) of water, and 24 hours later amphipods had moved into this area, presumably from the surrounding mesocaverns (Howarth 1983a, 1983b). The foraging activities of both the Kauai cave wolf spider and the Kauai cave amphipod are restricted to dark, moist areas of large caverns and mesocaverns, and it is possible that the majority of their time is spent within such spaces.

Both Howarth (1983a) and Huppop (1985) have postulated that troglobites may be adapted to cope with low levels of oxygen and/or elevated concentrations of carbon dioxide, similar to conditions that would be encountered in the stagnant air zone of caves. This ability has been substantiated from observations in known stagnant air zones (Howarth and Stone 1990), as well as under controlled laboratory experiments. Hadley *et al.* (1981) conducted experiments with Hawaiian wolf spiders, both troglobites (*Lycosa howarthi*) and a related surface-dwelling species (*Lycosa* sp.). These researchers found the surface-inhabiting spider had a higher metabolic rate, requiring 2.5 times more oxygen as did its cave-dwelling relative. The reduced need for oxygen would better allow these spiders to survive in stagnant air cave zones. Given the ability of at least

some troglobites to cope with reduced oxygen and elevated carbon dioxide, as well as their ability to inhabit inaccessible mesocaverns, it is assured that many troglobites will be able to reside in areas not readily surveyed by biologists. Hence, cave habitats will extend well beyond those areas accessible by researchers (Howarth 1983a).

Species Distribution and Abundance

The Kauai cave wolf spider and Kauai cave amphipod are generally restricted to cave dark and stagnant air zones, or other subterranean habitats such as cracks, voids, and other mesocaverns containing microclimate conditions similar to those zones. However, both the cave wolf spider and amphipod may be found in sub-optimal cave habitats (e.g., cave transition zone) when conditions are appropriate (e.g., elevated humidity during periods of increased rainfall). All of the caves where the cave amphipod has been located contain penetrating plant roots and/or other decomposing plant material which serves as a food source for this detritivore. Plant material upon which the amphipods feed need not be from native plants, although non-native toxic or indigestible plants may be inappropriate or damaging for amphipod foraging. The Kauai cave wolf spider can be found in caves where the cave amphipod does not occur, but, other, non-native arthropods (e.g., cockroaches, wood lice, small spiders) can be used as food for this generalist predator.

Since its discovery in 1971, the Kauai cave wolf spider has been observed in only five caves in the Koloa area. Since 1996, Service biologists have conducted annual surveys, and starting in 1998, we have conducted biannual monitoring visits to three of the known occupied caves. Observations recorded in these visits include a total count of animals within each cave, potential threats to the listed cave organisms or their habitat, and the cave's condition (e.g., human disturbance, presence of standing water). The following information is based on these monitoring visits.

In three of these five caves, wolf spiders have been seen on only three occasions, but have been more often observed in two other caves. Of the two known occupied caves, in only one of these are wolf spiders encountered during every monitoring visit with 14 to 28 individuals being encountered during any monitoring visit (USFWS data from 18 January 1996 to 22 June 2001). The second cave contains a smaller number of wolf spiders (one to four per monitoring visit) and spiders are frequently absent; since April 2000, no wolf spiders have been observed in this cave. This decline in wolf spiders has been matched with a corresponding increase in the number of resident brown violin spiders, an alien, web-building species that likely preys upon both the Kauai cave wolf spider and amphipod (A. Asquith, *in litt.* 1994b; David Hopper, Service, *in litt.* 1999). Although these data are not conclusive, the declining numbers in the second of the regularly occupied caves warrants concern with regard to population persistence.

To date, the Kauai cave amphipod has been recorded from six caves in the Koloa area but is only regularly encountered in three of these caves. In one of these three caves, where the amphipod is found with the wolf spider, their numbers have ranged from 8 to 37 during the biannual monitoring visits. In another regularly occupied cave, amphipod numbers have increased steadily from 10 to 20 individuals per visit in pre-1998 counts to over 300 individuals during a visit in November 2000 (Service, unpub. data).

In three of the six known occupied caves, the lack of observations of the species is probably due to several factors. In one of these caves, relative humidity is often below 100 percent, which is a suboptimal condition for troglobites. Amphipods have been found in this cave when humidity conditions were optimal, such as after heavy rains which saturated the soil and increased the relative humidity in the dark zone. In a second cave, amphipods appeared to be resident but were only observed during two visits that were conducted soon after the cave had been exposed by heavy machinery, and prior to the cave being re-closed for road construction (A. Asquith, *in litt.* 1999). The last of these caves has been visited irregularly and amphipods have been observed during some, but not all, visits (Bousfield and Howarth 1976; D. Hopper, *in litt.* 1998a; D. Hopper, *in litt.,* 2000a).

Despite the data obtained in these biannual monitoring counts, the quantities of animals reported do not represent sound population estimates. The methods needed to conduct non-damaging, mark-recapture studies for accurate estimates of population size are yet un-developed for these animals, and no attempt to conduct such studies have been undertaken.

Cave systems may be separated by various physical barriers such as subterranean streams, or areas with developed soils that have filled in the mesocavern passages or habitats of these old caves (Mueller-Dombois and Howarth 1981). The degradation and loss of naturally occurring mesocavern habitats and corridors has likely been accelerated with development or other land uses which often requires clearing of vegetation, blasting, and filling of trenches and construction sites. These activities, as well as modern agricultural practices, exacerbate the rates of sediment mobilization (Kirch 1982; Cuddihy and Stone 1990) resulting in the filling of caves and mesocaverns (Howarth 1973; Mueller-Dombois and Howarth 1981; Burney *et al.* 2001).

Because distinct species can evolve in adjacent lava tubes even when cave animals can move extensively through mesocaverns (Hoch and Howarth 1993), it is prudent to consider the separate localities of these animals as different populations, even though intervening areas of potential habitat cannot be surveyed. Thus, the Koloa Caves #1 and #2 and adjacent areas are considered to harbor one population of the spider and one population of the amphipod. The seaward Kiahuna Caves #267 and #276 harbor another population of both the spider and amphipod; the Kiahuna Cave #210 harbors a separate population each of the spider and amphipod; the Mahaulepu Cave harbors a population of the cave amphipod (Service, unpublished data, 1998–1999); and a small cave near the Koloa bypass road harbors a fifth amphipod population.

Previous Federal Action

On June 16, 1978, we published in the **Federal Register** a proposal to list the Kauai cave wolf spider as an endangered species and the Kauai cave amphipod as threatened (43 FR 26084). That proposal was withdrawn on September 2, 1980 (45 FR 58171) as a result of a provision in the 1978 Amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final within 2 years of the proposal or within one year after passage of the Amendments, which ever period was longer. An initial comprehensive Notice of Review for invertebrate animals was published on May 22, 1984 (49 FR 21664), in which the Kauai cave wolf spider and Kauai cave amphipod were treated as category 2 candidates for Federal listing. Category 2 taxa were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules.

We published an updated Notice of Review for animals on January 6, 1989 (54 FR 554). In this notice, the Kauai cave wolf spider and Kauai cave

amphipod were treated as category 1 candidates for Federal listing. Category 1 taxa were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. However, in the Notice of Review for all animal taxa published on November 21, 1991 (56 FR 58804), the two Kauai cave arthropods were listed as category 2 candidates. In the November 15, 1994, Notice of Review for all animal taxa (59 FR 58982), the two Kauai cave arthropods were again elevated to category 1 candidates. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using candidate category designations and included the two cave arthropods as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. The two cave arthropods were included as candidate species in the September 19, 1997 (62 FR 49398), Notice of Review.

A proposed rule to list these two species as endangered was published on December 5, 1997 (62 FR 64340), and the final rule to list them was published on January 14, 2000 (65 FR 2348). Since that time, we have conducted conservation efforts through private lands partnerships with two landowners in the Koloa area within which the Kauai cave wolf spider and Kauai cave amphipod are known to occur.

In the proposed listing rule, we indicated that designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod was not prudent. Our concern was that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase human visitation to these highly sensitive cave habitats, which could lead to incidents of vandalism, destruction of habitat, and unintentional cases of take. Also, we believed that critical habitat designation would not provide any additional benefit to these species beyond that provided through listing as endangered.

However, in the final rule, we determined that critical habitat designation was prudent as we did not find specific evidence of taking, vandalism, collection, or trade of these species or any other similarly situated species. Also, we did find that there may also be some educational or informational benefit to designating critical habitat. Therefore, we found that the benefits of designating critical habitat for these two species outweighed the benefits of not designating critical habitat.

On June 2, 2000, the U.S. District Court for the District of Hawaii, in the case of *Center for Biological Diversity* v. *Babbitt and Clark,* Civ. No. 99–00603 (D. Haw.), ordered us to publish the final critical habitat designation by February 1, 2002. Currently, the plaintiffs and the Service have entered into a consent decree dated October 2, 2001, stating that we will jointly seek an extension of this deadline to August 10, 2002 (*Center for Biological Diversity, et al.* vs. *Norton,* Civil No. 01–2063 (D.D.C).

On February 14, 2001, we mailed pre-proposal letters to 96 interested parties and cave biologists informing them that we were in the process of designating critical habitat for the Kauai cave wolf spider and Kauai cave amphipod. We requested from them information on management of lands that are known to currently support the Kauai cave wolf spider or amphipod. The letters contained a fact sheet describing the two species and their habitat, and a map showing the presumed historic and current range (based on occupied habitat and the distribution of similar geology and soils) of one or both of these species. The letter requested any information regarding current or planned land management practices benefiting these animals or their habitat, which we requested be returned to us by March 31, 2001. We received eight responses to our landowner and interested parties mailing.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation,'' as defined by the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, in such instances critical habitat designation would not afford any additional regulatory protection under the Act.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified or help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be

inadequate to ensure the conservation of the species.''

Section 4(b)(2) of the Act requires that, when determining the final designation of critical habitat, we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, however, and populations may move from one area to another over time. In addition, given the cryptic nature of these animals and their habitat, additional populations may be discovered in other areas over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Kauai cave wolf spider and the Kauai cave amphipod. This information included: peer-reviewed scientific publications; the final listing rule for the Kauai cave wolf spider and Kauai cave amphipod (65 FR 2348); the Hawaii Natural Heritage Program database; unpublished field data collected by Service biologists, unpublished field notes and communications with other qualified biologists or experts (e.g., F. Howarth, Bishop Museum); published descriptions of the regional geology and soils (MacDonald *et al.* 1960; Foote *et al.* 1972); and the Recovery Outline and draft Endangered Species Recovery Plan for Two Cave Arthropods from Kauai, Hawaii (Service, *in litt.,* 2000).

The Koloa lava tubes of Kauai and their associated endangered fauna were identified as one of the ten most endangered cave communities in the world (Tongvig and Mylroie, *in litt.* 1998; Belson 1999). Approximately 36 percent of the original habitat available for the cave animals is now designated as ''urban'' or ''urban residential'' (County of Kauai, *in litt.* 1994), and the human population of the Koloa area is expected to double by the year 2015 (KPMG Peat Marwick 1993). Thus most of the land that potentially harbored these animals has been highly modified, and an estimated 75 percent of the area has been rendered uninhabitable. The remaining habitat is being degraded by current land use or is threatened with degradation and destruction from proposed development and alien species. The area currently known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod represents a small percent of the species' likely range, harboring three known (sub)populations of the Kauai cave wolf spider and five known (sub)populations of the Kauai cave amphipod. These existing (sub)populations would be unlikely to persist because their small sizes make them vulnerable to extinction due to a variety of natural and human-induced processes. Small populations are particularly vulnerable to reduced reproductive vigor caused by inbreeding depression, and they may suffer a loss of genetic variability over time due to random genetic drift, resulting in decreased evolutionary potential and ability to cope with environmental change (Frankel 1970, 1983). Small populations are also demographically vulnerable to extinction caused by random fluctuations in population size and sex ratio and to catastrophes such as hurricanes (Soule 1983; Gilpin and Soule 1986). In addition, the low reproductive potential of both cave species (less than five percent of their surface relatives) means that they require more time and space to recover from a disturbance than would similar animals living on the surface (F. Howarth, *in litt.* 2001).

One of the major threats facing the Kauai cave wolf spider and the Kauai cave amphipod is the introduction of invasive alien diseases (F. Howarth, *in litt.* 2001). Of particular concern are the several disease-causing micro-organisms that are being sold or are in development for sale as biopesticides in the United States. These species are inhabitants of soil, and would be expected to do well in caves. An example of one of these micro-organisms currently used in Hawaii is BT (*Bacillus thuringiensis*). Most recently BT was promoted in the State's efforts to eradicate an outbreak of dengue fever. In addition to intentional introductions, an unintentional introduction from a soil source originating outside of Hawaii could begin an epizootic that could sweep through part or all of the Koloa cave habitat. If portions of the habitat are more or less isolated and protected, the chances are greater that the animals would survive and eventually re-colonize their former habitat. This situation would also apply for other surface disturbances, such as oil spills, pollution, and pesticide application.

Human impacts in the Koloa caves, and resulting impacts on the Kauai cave wolf spider and Kauai cave amphipod are another concern. Caves are frequently sought out by curiosity seekers, and over-use of caves occurs readily due to their fragile nature (Howarth 1982; Culver 1986). In addition, both natural and cultural features (e.g., human burials and associated artifacts) of caves are often damaged or destroyed by collectors or

vandals (Howarth 1982; N. McMahon, Hawaii Dept. Historic Preservation, pers. comm., 2001). Unauthorized visitation and vandalism is such an issue in caves that the Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*; 102 Stat. 4546) was passed with the main intent of protecting cave-associated natural and cultural resources. Unauthorized entry and vandalism of the Koloa caves has been documented (D. Hopper, *in litt.,* 1998b, 2000a), and public interest in visiting caves is reflected in the publication of the location of two of these caves in a recent tourist guide (Doughty and Friedman 1998).

Human visitation to caves, even when not intentionally destructive, often results in severe impacts to the resident troglobites or other cave inhabitants. For example, nicotine is a potent insecticide that is easily introduced into the cave environment through cigarette smoke or discarded butts. Given the confined space and poor air circulation encountered in caves supporting suitable troglobite habitat, the effects of cigarette smoke are far more pronounced in caves (Howarth 1982; Howarth and Stone 1993). The impacts of cigarette smoke are not restricted to the main cavern and will also impact mesocavern habitats, where its effects cannot be seen. Although less toxic than cigarette smoke, wood fire smoke may be equally damaging since far more smoke is produced and detrital food reserves may be burned. The use of cigarettes, as well as fire activity, have been documented in the Koloa caves (D. Hopper, *in litt.,* 1998b, 2000a).

The narrow confines of most caves often result in focusing human travel and associated impacts to a small area, and increase the likelihood of troglobite mortality from unintentional trampling and the destruction or disturbance of food resources (e.g., roots, detrital matter). In addition, human use of caves frequently results in the importation of garbage, which encourages the invasion of caves by potential competitors and predators such as cockroaches (F. Howarth, Bishop Museum, pers. comm., 1994; A. Asquith, *in litt.,* 1994a).

The restricted area in which the Koloa cave animals occur is rapidly undergoing development (KPMG Peat Marwick 1993). The shallow cave habitat has been, and continues to be, degraded or destroyed through surface alterations such as the removal of perennial vegetation, soil fill, grading, paving, collapsing and filling of caves, diversion of waste water into subterranean voids and spaces, and other activities associated with development and agriculture.

The Kauai cave wolf spider and Kauai cave amphipod are also increasingly at risk from predation and competition for space, water, and nutrients by introduced, non-native animals (Howarth 1985, pers. comm., 1994; A. Asquith, *in litt.,* 1994a, b; D. Hopper, *in litt.,* 1999), biological and chemical pest control activities associated with residential and golf course development (Hawaii Office of State Planning 1992); and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals, populations, and their limited distribution.

Due to the small number of known caves inhabited by these animals, we remain concerned that these threats may be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Since publication of the proposed listing rule for these animals in 1997 (62 FR 64340), we have found evidence of increased entry and vandalism in these caves (D. Hopper, *in litt.* 1998b, 2000b). While direct and intentional threats to these species from human take and collection are not documented, the sensitive nature of these animals and their habitat to increased human presence makes increased human awareness of these caves a potential direct threat to the Kauai cave wolf spider and Kauai cave amphipod.

Prior to human alteration of the surface and subsurface habitats, which resulted in the loss of subterranean habitat and dispersal corridors, troglobite subpopulations were probably more genetically mixed, being exposed to a greater frequency of emigration and immigration between these subpopulations. Connecting subpopulations via dispersal corridors would increase the overall effective population size and increase genetic exchange, thereby helping to alleviate the threats associated with small population size, and would better reflect the conditions under which the Kauai cave wolf spider and the Kauai cave amphipod existed prior to human alteration of the Koloa area. Areas between known, occupied caves that could contain important subterranean habitat (e.g., undeveloped lands) include, but are not limited to: Active and fallow agricultural lands, livestock pasture, golf courses, undeveloped land between ''low density'' residences, and undisturbed, but biologically invaded (i.e., non-native weeds) forests and shrublands. Protecting habitat areas around known subpopulations of these endangered cave animals would increase the likelihood of their survival since it would potentially increase the size of the habitat patch and increase the probability of emigration and immigration with other subpopulations. In addition, if each cave population is isolated, it will be only a matter of time before individual events eventually result in the extinction of each population in turn. If the caves are connected, the animals would have a better chance at retreating from disturbances and a disturbance affecting one or more cave systems will be less likely to result in the extinction of the species.

Section 3(5)(A)(ii) of the Act provides that areas outside the geographical area currently occupied by the species may meet the definition of critical habitat upon determination that they are essential for the conservation of these species. Although we do not know whether the entire area is currently occupied, to date, all caves that have been surveyed within the Koloa Basin, that contain the primary constituent elements, have contained the Kauai cave amphipod and/or cave wolf spider. Hence, where appropriate habitat occurs within the Koloa Basin, we fully expect it will be occupied by one or both of these species. Intervening areas between the known occupied caves, that are comprised of cave-bearing rock, will contain occupied habitat and/or serve as corridors between suitable habitat and all of these areas need to be protected if these species are to be conserved. The final rule listing the Kauai cave wolf spider and Kauai cave amphipod stressed that these animals were at increasing risk from '''predation and competition for space, water, and nutrients by introduced, alien animals; biological and chemical pesticide control activities associated with residential and golf course development; and an increased likelihood of extinction from naturally occurring events due to the small number of remaining individuals and populations and their limited distribution''' (65 FR 2348). Recovery may require augmentation or enhancement of suitable cave habitat in areas in which the current population densities of one or both of these animals are known to be low due to food limitation. Protected areas around and adjacent to accessible, occupied caves are needed for recovery since these habitat areas will allow for the expansion of existing populations and help alleviate the threats associated with small population size. Subterranean habitats that lack appropriate food resources must also be protected since such spaces will provide opportunities for dispersal among

subpopulations, promoting mate location and genetic exchange, and will allow these animals to gain access to other needed resources that may become limiting within a smaller area.

In determining these areas we started with lands within the region containing geologic and soil characters similar or identical to those of known, occupied, accessible caves. This area includes the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972) where it over lies the Koloa Volcanic Series flows (MacDonald *et al.* 1960). Within this area, we conferred individually with the recognized expert on the probable distribution of appropriate mesocaverns (F. Howarth *in litt.* 2001). Multiple cave entrances are known within the following geographic zone—the area between Kukuiula Bay, northeast to Koloa Town and east to, and including, the volcanic cones inland of Poipu, as well as the Mahaulepu limestone bluff and cave and a wide connecting corridor in limestone and lava along the coast from Poipu to Mahaulepu. The whole region is similar to the Koloa Cave reserve (Kukuiula area) in surface environment and sporadic bare lava exposures, while areas to the south and east include prominent cave and mesocavern-bearing limestone features. Expert opinion is that these areas represent good habitat for the cave animals (F. Howarth, *in litt.* 2001). Within the areas described above are occupied lava tubes as well as geologic features indicating the presence of additional cave-bearing rock.

The Kukuiula area (that area lying between Kukuiula Bay, Koloa Town, Waikomo Stream and south to the coast) is known to contain numerous caves and cave-bearing rock. Two caves within this area are occupied by the Kauai cave wolf spider and the Kauai cave amphipod, and one of these caves is home to the largest known population of the wolf spider.

Three caves known to contain one or both of the Kauai cave arthropods are located in the area east of Waikomo Stream and west of the Poipu volcanic cones (Puu Wanawana, Puu Hunihuni, and the Puu Hi Reservoir cone). This area is similar to the Kukuiula area in the amount of exposed cave-bearing rock (pahoehoe lava flows) and degree of geologic weathering. In addition, Puu Wanawana and Puu Hi are spatter cones that are known to contain caves. In addition, the longest known cave on Kauai was located upslope from Kiahuna, between the Koloa Mill on the east and Koloa Town on the west. This cave was filled with cane waste in the early 1970s, before it could be surveyed but indicates that there are other caves and mesocaverns in the area (Howarth 1973, and F. Howarth, pers. comm., 2001).

The exposed sea cliffs along the coast from Poipu to Mahulepu are composed of calcified marine deposits. These karst outcrops are part of the same geologic deposits that contain the cave at Mahulepu that is occupied by the Kauai cave amphipod. Solution pockets and voids are abundant in this rock type and, like the cave at Mahulepu, lie on top of old, lava-tube-bearing pahoehoe flows. The presence of both basalt and calcareous cave-bearing rock along this coast line indicates that there is suitable habitat connecting the Mahaulepu caves with those of the lava tubes of the Koloa area.

Because a recovery plan for neither of these species has been completed, in making this determination we looked to the most likely historical distribution of the Kauai cave wolf spider and the Kauai cave amphipod. We included areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat, and further refined it by conferring with the recognized expert on the probable distribution of mesocaverns in the Koloa area (F. Howarth *in litt.* 2001). This approach is consistent with the approved recovery outline for the Kauai cave wolf spider and the Kauai cave amphipod. If, after critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod is designated, a final approved recovery plan for these animals calls for a different approach to the conservation of the Kauai cave wolf spider and the Kauai cave amphipod, we will consider amending the critical habitat designation, subject to resource and workload priorities.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to consider those physical and biological features essential to the species' conservation that may require special management considerations and protection. Such features are termed primary constituent elements, and include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, minerals and other nutritional or physiological requirements; cover or shelter; and habitats that are protected from disturbance and represent the historic geographical and ecological distributions of the species.

The habitat requirements of the Kauai cave wolf spider and Kauai cave amphipod may differ slightly as the wolf spider can feed on other arthropods that become trapped in caves or reside in caves facultatively. However, as observed elsewhere in Hawaii, the presence of a healthy, intact cave ecosystem, which includes roots or other sources of naturally occurring detritus and an associated detritivore or herbivore fauna, contains larger numbers of healthy troglobitic predators (A. Asquith, pers. comm., 2001). While native, troglobitic predators, detritivores, and herbivores may be present in caves lacking naturally occurring plant biomass, this situation represents an un-healthy cave ecosystem. Native troglobitic assemblages occurring in ''sterile'' caves (those lacking roots or other sources of active nutrient input) probably represent declining populations that will be extirpated as the existing plant biomass is consumed.

As with most troglobites, both the Kauai cave wolf spider and Kauai cave amphipod require dark or stagnant air zone habitats in caves. These zones typically have atmospheres with humidity at saturation levels (greater or equal to 100 percent), which is necessary to prevent desiccation and death of the troglobites.

A sustainable food base, such as the roots of living perennial plants or other sources of detritus, is necessary to support a breeding population and for the long-term survival of the Kauai cave amphipod and other herbivorous or detritivorous troglobites. In turn, healthy populations of herbivores or detritivores will help ensure that co-evolved predators, such as the Kauai cave wolf spider, will also persist as viable populations.

There is little information on what, if any, species of food plants are preferred by the Kauai cave amphipod. Since the amphipod is regarded as a detritivore, there may be little or no food specialization by these animals. However, plant species containing naturally occurring toxic compounds, such as tannins or alkaloids, might be of low food value, inhibit feeding, or result in the direct mortality of cave organisms. For this reason plant species and their potential toxicity must be considered as well. Likely candidates for suitable plants would be native species like ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*).

The primary constituent elements required by the Kauai cave wolf spider and the Kauai cave amphipod consist of two environmental parameters. The first of these is the presence of subterranean

spaces from 5 mm to 25 cm (0.2 in to 10 in) at the narrowest dimension (collectively termed ''mesocaverns'') or caves or passages, (spaces greater than 25 cm) (>10 in) that have dark and/or stagnant air zones that maintain microclimates with humidity at saturation levels. The second is the presence of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*) in these types of mesocaverns or caves.

The areas proposed as critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod are designed to incorporate what is essential for their conservation. Habitat components that are essential for these two species include the primary biological needs of foraging, reproduction, intra-specific communication, dispersal, genetic exchange, or non-restricted movement to appropriate microclimates in mesocaverns, and refugia from human induced or other environmental threats. Caves and mesocaverns containing actively growing tree roots or other sources of detritus provide a food source for herbivorous or detritivorous troglobites, which in turn provide food for predators. Such caves will be necessary for the long-term persistence of viable populations of the endangered troglobites by providing areas for foraging and reproduction. Caves and or mesocaverns lacking food resources but containing appropriate microclimates are important in providing corridors which facilitate movement and genetic exchange between populations or subpopulations. In addition, these areas may also provide dispersal opportunities from areas impacted by human-induced or other environmental threats, and may provide humid refugia at times when main cave passages become temporarily drier or otherwise less accomodating.

Criteria Used To Identify Critical Habitat

We used several criteria to identify and select lands for designation as critical habitat. First we selected critical habitat areas based on the known distributions of the Kauai cave wolf spider and the Kauai cave amphipod (known occupied habitat). We then added lands containing the primary constituent elements that are needed for recovery of the species but where, due to the cryptic nature of the habitat, it is unknown whether they are occupied or not. As discussed in greater detail in the Methods section, in deciding which areas were essential for recovery, we used the areas within the region containing geologic and soil characters similar or identical to those of known occupied habitat. In addition, we conferred individually with the recognized expert on the probable distribution of mesocaverns in the Koloa area. These areas are likely to contain caves or appropriate mesocavern habitats. For the purpose of this proposed determination, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD83) coordinates using a scale of 1:85,000. Soil series was determined using information and maps from soil surveys (Foote *et al.* 1972). Geologic and soil features that appear to limit the distribution of cave and mesocavern habitats were determined using information and maps from MacDonald *et al.* (1960) and Foote *et al. (1972*).

We were unable to map the critical habitat unit boundaries in sufficient detail to exclude all existing developed lands that do not contain the primary constituent elements. As specified in the proposed rule language, existing features and structures within the boundaries of the mapped units that have resulted in below-surface modification or alteration are excluded from critical habitat designation. Human-constructed structures and features, such as large buildings, homes, major roads, and other activities or projects that require trenching, filling, and/or excavation, likely resulting in loss or severe degradation of the primary constituent elements and are therefore not included within this critical habitat designation. Such human-constructed structures and features would include homes and buildings for which the underlying bedrock has been altered for their construction through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water and underground electrical supply corridors and conduits. Additional areas that are also excluded from critical habitat include paved roads, locations of prior or current use as a quarry, and sewage treatment facilities. Included in critical habitat are areas that have been modified on the surface, but for which below-surface modifications have not severely altered the underlying bedrock and subterranean habitat. These land uses include but are not limited to—agriculture (e.g., sugar cane, corn, coffee), range land, golf courses, county and city parks, unimproved roads, and undeveloped lands. These areas may lie adjacent to areas that have undergone extensive below-surface modification. Prior to finalizing this rule, we will seek ways to refine our mapping in order to exclude, from within the critical habitat boundary, developed areas or other areas that do not contain the primary constituent elements and therefore, would not be considered to be critical habitat.

Critical Habitat Proposal

Lands proposed as critical habitat provide the full range of primary constituent elements needed by the Kauai cave wolf spider and Kauai cave amphipod, including cave-bearing rock underlying undeveloped areas and areas with minimum or moderate surface modification in the Koloa District, to be used for foraging, shelter, and raising of offspring. Habitat that provides for dispersal of individuals and allows genetic exchange between populations has also been incorporated. Undeveloped areas lying between known occupied caves will contain subterranean spaces and voids that will provide primary habitat or act as corridors for movement of animals between foraging sites and dispersal between subpopulations, and should be regarded as critical habitat. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

Lands proposed as critical habitat for the Kauai cave wolf spider and Kauai cave amphipod occur in three separate units. The approximate area encompassing the proposed designation of critical habitat by land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
1a. Waikomo	128 ha	1,480 ha	0 ha	1,608 ha
	316 ac	3,658 ac	0 ac	3,974 ac
1b. Waikomo	0 ha	7 ha	0 ha	7 ha

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP—Continued

[Area estimates reflect critical habitat unit boundaries, not the primary constituent elements within]

Unit	State/Local	Private	Federal	Total
2. Haula	0 ac 0 ha	17 ac 68 ha	0 ac 0 ha	17 ac 68 ha
3. Puu Keke	0 ac 0 ha	168 ac 14 ha	0 ac 0 ha	168 ac 14 ha
	0 ac	34 ac	0 ac	34 ac
Total	128 ha 316 ac	1,569 ha 3,877ac	0 ha 0 ac	1,697 ha 4,193 ac

Proposed critical habitat includes land under private, county, and State ownership. Proposed lands include areas known to be occupied by the Kauai cave wolf spider and the Kauai cave amphipod and includes habitat with similar distribution of geologic and soil characteristics of known occupied habitat and that contain the most probable distribution of appropriate mesocaverns. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

Unit 1: Waikomo

Unit 1 is the largest unit, encompassing 1,615 ha (3,991 ac) of the greater Koloa Basin from sea level to elevations of approximately 120 m (400 ft) above sea level. This unit has been further divided into two subunits, 1A and 1B, since intervening areas between these units have undergone development and the below surface habitats have been extensively modified. Natural features of the unit include Kaulala Point to the southwest, Makahuena Point to the extreme south, Puna-hoa Point to the southeast, and Puu Hunihuni. Developed areas within the unit include Koloa Town and the Poipu residential and resort area.

Unit (subunit) 1A is the larger of the two subunits, comprising the vast majority of the proposed critical habitat (1,608 ha (3,974 ac)). The western portion of this subunit does not include areas along the coast where prior intensive development (e.g., major road, resort, and home construction) have greatly altered the subsurface habitats. Coastal areas excluded from this subunit include developed areas from Kaulala Point to western Makahuena Point. This subunit does include coastal areas from the Puu Ainako and Makawehi Bluff/Bench areas and to the east to the end of this subunit (i.e. Punahoa Point and Mahaulepu).

Unit 1B is a relatively small subunit (7 ha (17 ac)) that is comprised of undeveloped basalt and calcareous sea cliffs and adjacent areas from eastern Makahuena Point, east to areas above but adjacent to western Shipwreck Beach (Keoneloa Bay). This area has been spared from extensive development and the cave-bearing nature of the rock is identical to the Mahaulepu area which includes a cave occupied by the cave amphipod.

The Koloa Basin was the first location where large-scale sugar cane cultivation was established in Hawaii. Although sugar cane is no longer commercially harvested in Koloa, it is present over extensive areas where soils are relatively well developed and other land uses have not been implemented. Given the long history and use of this area by Polynesian and European cultures, very little native vegetation is present and the area is dominated by alien species such as kiawe (*Prosopis pallida*), koa haole (*Leucaena leucocephala*), banyan (*Ficus* spp.), Manila tamarind (*Pithecellobium deluce*), and numerous other naturalized ornamentals and cultivars. Adjacent areas containing more contiguous stands of native vegetation are located at higher elevations, in areas of well-developed soils, outside of the Waikomo Soils area and the proposed critical habitat.

This unit (two subunits) contains all of the known occupied habitats of both the Kauai cave wolf spider and Kauai cave amphipod (*i.e.*, a total of seven caves), and all of these caves occur within private or county land. All of the occupied caves occur in volcanic flows of the Koloa Volcanic Series, which are present as exposed rock or covered under the shallow soils of the Waikomo-Kalihi-Koloa soil association (Foote *et al.* 1972), or in depositions of cave-bearing, calcareous (*e.g.*, calcified dunes, limestone) deposits. Proposed lands in Unit 1 provide for expansion of subpopulations by providing areas that share geologic and soil characteristics of known occupied habitat and include the most probable distribution of required mesocaverns. This habitat also has the largest human presence, which is likely to grow and increase, and therefore is under the greatest threat from human visitation and development. Inclusion of this additional habitat is essential to provide for: population expansion and dispersal, refuge from catastrophic events, and habitat corridors needed to maintain gene-flow within the population and/or subpopulations.

Unit 2: Haula

Unit 2 is the second largest of the three units, being approximately 68 ha (168 ac) in total area covered. The elevational range of this unit is sea level to approximately 110 m (360 ft) above sea level. Natural features of the unit include Haula, Paoo Point, and a portion of the coast of Kawailoa Bay. Unit 2 contains no developed areas, but the area has been greatly altered from various human uses such as grazing, and has been altered by the invasion of alien plants such as koa haole and iron wood (*Casuarina equisetifolia*). Native dryland vegetation such as ilima (*Sida fallax*) and maiapilo (*Capparis sandwichiana*) is common along portions of the coast line and uplands. The high-elevation portions of the unit need further surveys but are expected to be alien-dominated.

Unit 2 is composed of uplifted coral and algal reefs and consolidated calcareous deposits (MacDonald *et al.* 1960), and exposed, basaltic flows are not believed to be present within this unit. This unit lies only a short distance (approximately 350 m (1,100 ft)) from the occupied Waikomo Unit, and was likely once connected to that unit in the geologic past (Pleistocene Era) by deposits that have since eroded away or have been covered by unconsolidated sediments. It is not known if this unit is currently occupied by the Kauai cave wolf spider, Kauai cave amphipod, or other endemic troglobites.

Recent visits to this unit have found that the area is composed of exposed calcareous deposits containing cracks and solution pockets, which are indicative of the presence of underlying cave and mesocavern habitats. While

accessible caves have not been located, air-passages, holes, and fissures visible above ground strongly suggest the presence of underlying caves or mesocaverns. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Unit 3: Puu Keke

Approximately 14 ha (35 ac) in total area, Unit 3 is the smallest of the three units and lies between 30 to 60 m (100 to 200 ft) above sea level. It's geographic and geologic setting is similar to that of Unit 2 which lies less than 46 m (150 ft) to the east. Like Unit 2, the vegetation is not well characterized but most likely is largely dominated by alien vegetation.

This unit is also composed of consolidated calcareous deposits, and has a high probability of containing subsurface habitats, but details of the composition of these deposits are not known. The presence of obligate cave-dwelling organisms is presently unknown. Critical habitat designation of this unit is proposed because of the cave-bearing nature of the geology, and because of the occurrence of occupied habitat in adjacent areas with similar geologic features. Because the types of voids that occur in these calcareous formations continuously reform thereby providing suitable habitat for very long time spans, this area is essential to provide for expansion and refuge from human and catastrophic environmental threats. This unit currently has minimal human presence in the area and there are no known current plans for development.

Effects of Critical Habitat Designation

Section 7. Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are unlikely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Kauai cave wolf spider or Kauai cave amphipod or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (ACOE) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency (FEMA), or Natural Resources Conservation Service (NRCS)) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the Kauai cave wolf spider and Kauai cave amphipod is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

Activities that may directly or indirectly adversely affect critical habitat for these cave animals include, but are not limited to:

(1) Removing, thinning, or destroying perennial surface vegetation occurring directly above or adjacent to the cave or within the cave (roots) or mesocaverns (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (e.g., wood cutting, grading, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Activities within or outside of the cave or other mesocavern (i.e., all cave-bearing rock) that promotes prolonged soil-disturbance, resulting in the filling of caves, voids, and mesocaverns, with sediments or other materials, or alters airflow, and/or light penetration such that habitat microclimates are exposed to conditions of desiccation. These activities include, but are not limited to: utilizing caves for the disposal of wastes or unwanted soil or rock, elevated and prolonged soil disturbance above or adjacent to cave-bearing rock, closing existing cave openings, breeching existing caves (i.e., creating new openings), modifying the natural geomorphology of a cave interior, passage, or opening;

(3) Appreciably decreasing habitat value or quality through indirect effects (e.g., introduction or promotion of potential troglophilic) (i.e., non-obligate cave visitors) predators, parasitoids, diseases, or disease vectors (e.g., non-native arthropods), vertebrate or invertebrate food competitors, or invasive plant species), habitat fragmentation, overgrazing, water diversion or impoundment, groundwater pumping, inappropriately planned ground water disposal (e.g., diversion into potential habitat or prevention of natural water recharge into soils and rock above and adjacent to caves) or other activities that could potentially alter water quality or quantity to an extent that vegetation structure is affected, reduced cave humidity levels, habitat is flooded, or toxic materials (e.g., pesticides, fuel, solvents, or other household or industrial chemicals) are transported into habitat, and activities that increase the risk of fire within or outside habitats above the cave;

(4) Application of pesticides, herbicides, insecticides, fungicides or other such chemicals within, above, or adjacent to known habitat, that may directly or indirectly affect troglobitic organisms; and

(5) Release of certain biological control organisms within or outside of the critical habitat area. Biological organisms include, but are not limited to: predaceous or parasitoid vertebrates or invertebrates, fungi, bacteria, or other natural or bio-engineered bio-control organisms.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat.

Actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area affected by the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

Federal agencies already consult with us on activities in areas where the species may be affected by their projects to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the ACOE under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Development on private or State lands requiring permits from other Federal agencies, such as the Department of Housing and Urban Development;

(4) Construction of communication sites licensed by the Federal Communications Commission;

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(6) Hazard mitigation and post-disaster repairs funded by the FEMA; and

(7) Activities not previously mentioned that are funded or authorized by the U.S. Department of Agriculture (Forest Service, NRCS), Department of Defense, Department of Transportation, Department of Energy, Department of the Interior (U.S. Fish and Wildlife Service, U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), ACOE, FEMA, Environmental Protection Agency, or any other Federal agency.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants, and inquiries about prohibitions and permits, should be directed to the U.S. Fish and Wildlife Service, Endangered Species Act Section 10 Program at the same address.

Exclusions Under Section 3(5)(A) Definition

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Special management and protection are not required if adequate management and protection are already in place. Adequate special management or protection is provided by a legally operative plan/agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. If any areas containing the primary constituent elements are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod and do not require additional management or protection, we may exclude such areas from the proposed rule because they would not meet the definition of critical habitat in section 3(5)(A)(i) of the Act.

We used the following three guidelines to determine if a plan provides adequate management or protection—(1) A current plan specifying the management actions must be complete and provide sufficient conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan

must provide assurances that the conservation management strategies will be effective.

In determining if management strategies are likely to be implemented, we considered whether: (1) A management plan or agreement exists that specifies the management actions being implemented or to be implemented; (2) there is a timely schedule for implementation; (3) there is a high probability that the funding source(s) or other resources necessary to implement the actions will be available; and (4) the party(ies) have the authority and long-term commitment to the agreement or plan to implement the management actions, as demonstrated, for example, by a legal instrument providing enduring protection and management of the lands.

In determining whether an action is likely to be effective, we considered whether: (1) The plan specifically addresses the management needs, including reduction of threats to the species; (2) such actions have been successful in the past; (3) there are provisions for monitoring and assessment of the effectiveness of the management actions; and (4) adaptive management principles have been incorporated into the plan.

Based on information provided to us by landowners and managers to date, we find no areas are adequately managed and protected to address all of the threats to Kauai cave wolf spider and Kauai cave amphipod and thus no areas qualify for exclusion under section 3(5)(A) of the Act. Several areas are covered under management plans and are currently managed in a manner that meets some of the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod, but we find that in none of these areas does present management adequately reduce all the primary threats to these species or that such management will be implemented into the future. For example, we have no assurance that one cave system, currently free of development plans, will retain a protected status for the long-term. Other areas of habitat lack a timely implementation schedule and appropriate management has lagged.

Adequate reduction of the threat from non-native predators (e.g., brown violin spider), already present within some caves may, to some extent, require different management activities. This may be difficult for managers to control and is not, at this time, a requirement in determining whether an area is being adequately managed such that it does not meet the definition of critical habitat.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat designation if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an economic analysis for this proposal prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period on the draft economic analysis and proposed rule at that time.

We believe that in most instances the benefits of excluding habitat conservation plans (HCPs) from critical habitat designations will outweigh the benefits of including them. Currently, there are no HCPs including the Kauai cave wolf spider and/or the Kauai cave amphipod as covered species. However, two separate landowners have entered into cooperative agreements with us that cover both of these species. Conservation actions were outlined in those agreements to benefit these species, and one landowner has initiated a couple of those actions, such as gating and locking one of the caves to prevent disturbance, and planting suitable vegetation above the cave foot print to enhance the below-ground habitat. The other landowner has not yet initiated conservation actions outlined in their agreement. In the event that these cooperative agreements are developed into HCPs, or future HCPs are developed within the boundaries of designated critical habitat, we will work with applicants to encourage them to provide for protection and management of habitat areas essential for the conservation of these species. This could be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas to minimize impacts to critical habitat.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the number and/or distribution of Kauai cave wolf spider and/or the Kauai cave amphipod, and what areas are essential to the conservation of these species and why;

(3) Whether lands within proposed critical habitat are currently being managed to address the conservation needs of the Kauai cave wolf spider and/or the Kauai cave amphipod;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether future development and approval of conservation measures (e.g., Conservation Agreements, Safe Harbor Agreements, etc.) should be excluded from critical habitat and, if so, by what mechanism; and,

(7) Economic and other values associated with designating critical habitat for the Kauai cave wolf spider and/or the Kauai cave amphipod, such as those derived from non-consumptive uses (e.g., hiking, sight-seeing, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). The Service is soliciting comments and additional information on the Kauai cave wolf spider and amphipod, their habitats, and any new information on their status or status of the habitat or lands throughout the proposed critical habitat area.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the

beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office in Honolulu.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) Is the background information useful and is the amount appropriate? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Required Determinations

Regulatory Planning and Review

Executive Order 12866

In accordance with Executive Order (E.O.) 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comment.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded from critical habitat designation pursuant to section 4 of the Act, we do not believe this rule will 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, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to E.O. 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see the ''Exclusions Under Section 4(b)(2)'' section of this rule). Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of the Kauai cave wolf spider and the Kauai cave amphipod since its listing in January 2000 (66 FR 4770). We will evaluate any additional impact through our economic analysis. Because of the potential for impacts on other Federal agencies activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies actions.

(c) We do not believe this rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we will evaluate any additional impacts through an economic analysis.

(d) OMB has determined that this rule raises novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the

rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Association, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Kauai cave wolf spider or the Kauai cave amphipod. If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants where consultation would already be required due to the presence of the listed species, because the duty to avoid adverse modification of critical habitat would not likely trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since the Kauai cave wolf spider and the Kauai cave amphipod have only been listed since January 2000, and no consultations have occurred involving these species, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities.

When the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because the Kauai cave wolf spider and the Kauai cave amphipod have been listed only a relatively short time and no activities with Federal involvement have occurred in these areas during this time, there is no history of any formal consultations based on the listing of these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

None of the proposed designation is on Federal lands. One of the three units contain land parcels owned and managed by the State of Hawaii. All of these State owned parcels are zoned as ''urban.'' On State lands, activities with no Federal involvement would not be affected by the critical habitat designation.

All three units of the proposed designation include private land. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation.

On the Island of Kauai, previous consultations under section 7 of the Act between us and other Federal agencies most frequently involved the Department of the Navy, and the ACOE. In the case of ACOE consultations, the applicant is often the County of Kauai which is not considered a small entity as defined here. ACOE consultations involve wetlands or waterways and occur due to the presence of species that spend at least part of their life in aquatic habitats. Consultation with the ACOE may occur if a permit is required for a project in Waikomo Stream that may negatively impact adjacent cave systems. Waikomo Stream runs between two known occupied cave systems and consultation may be required if the activities on the stream may affect the cave systems and the Kauai cave amphipod and Kauai cave wolf spider.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives. Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize

adverse impact to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. Although we have no consultation history for the Kauai cave wolf spider or the Kauai cave amphipod prior to their listing as endangered species, a road project was slightly modified when a cave occupied by the Kauai cave amphipod was breeched and threatened by the construction. The Service provided technical assistance to the Federal Highways Administration (FHA) which resulted in the project being implemented in a timely fashion without major changes, little or no added project costs, and without impacting the cave habitat. The modifications suggested were based on the geometry of the cave in relation to the road construction project, and our understanding of the needs of the species and the threats it faces, especially as described in the final listing rule, the draft Recovery Plan, and in this proposed critical habitat designation, as well scientific papers on the habitat requirements of troglobitic species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, identification and protection of occupied habitats, management of competing non-native species and predators, restoration and management of degraded habitat (surface and subterranean), and regular monitoring. For most foreseeable projects, these measures are not likely to result in a significant economic impact to project proponents because based on our experience, no proposed projects have been prevented from being implemented with or without some modification, due to the presence of known occupied caves, and some of these activities have been carried out by other private landowners with Service involvement. As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. It would not have a significant economic impact on a substantial number of small entities. The entire designation involves three units which primarily includes private land as well as some State and County lands. Probable future land uses in these areas are not expected to result in a Federal nexus or section 7 consultations. Projects likely to occur in these areas would likely involve only private funding and are not likely to require Federal permits. In these areas, Federal involvement— and thus section 7 consultations, the only trigger for economic impact under this rule— would be limited to a subset of the area proposed. The most likely Federal involvement would be associated with activities involving the U.S. Department of Agriculture, Federal Highways Administration (U.S. Department of Transportation), or the Federal Emergency Management Agency. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact since we expect that most proposed projects, with or without modification, can be implemented in such a way as to avoid adversely modifying critical habitat, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would provide can usually be implemented at low cost and include activities or measures such as modification of project foot-print, landscaping with native, perennial vegetation, and controlled use of pesticides. We are certifying that the proposed designation of critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod will not have a significant economic impact on a substantial number of small entities and that this proposed rule does not meet the criteria under SBREFA as a major rule: therefore an initial regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under E.O. 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

a. This rule, as proposed, will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Kauai cave wolf spider and the Kauai cave amphipod in a preliminary takings implication assessment. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the revised economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by the Kauai cave wolf spider and the Kauai cave amphipod would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and will plan public hearings on the proposed designation during the comment period, if requested. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Kauai cave wolf spider and Kauai cave amphipod.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The proposed designation of critical habitat for the Kauai cave wolf spider and Kauai cave amphipod does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available, upon request, from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

This rule was primarily prepared by the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.11(h) revise the entries for ''spider, Kauai cave wolf'' under ''ARACHNIDS'' and ''amphipod, Kauai cave'' under ''CRUSTACEANS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	*
ARACHNIDS							
*	*	*	*	*		*	*
Spider, Kauai cave wolf	*Adelocosa anops*	U.S.A. (HI)	NA	E	676	17.95(g)	NA
*	*	*	*	*		*	*
CRUSTACEANS							
*	*	*	*	*		*	*
Amphipod, Kauai cave	*Spelaeorchestia koloana*	U.S.A. (HI)	NA	E	676	17.95(h)	NA
*	*	*	*	*		*	*

3. Amend § 17.95 by adding, in the same alphabetical order as these species occur in § 17.11(h):

a. In paragraph (g), critical habitat for the Kauai cave wolf spider (*Adelocosa anops*); and

b. In paragraph (h), critical habitat for the Kauai cave amphipod (*Spelaeorchestia koloana*), as set forth below.

§ 17.95 Critical habitat-fish and wildlife.

* * * * *

(g) *Arachnids.*

Kauai cave wolf spider (*Adelocosa anops*)

(1) Critical habitat units are depicted for the island of Kauai, Hawaii, on the map below.

(2) The primary constituent elements for the Kauai cave wolf spider and the

Kauai cave amphipod are the presence of subterranean spaces from 5 mm to 25 cm (0.2 in to 10 in) at their narrowest point (collectively termed ''mesocaverns'') and/or cave passages greater than 25 cm (>10 in) that have dark and/or stagnant air zones that maintain relative humidity at saturation levels (≥100 percent); and the presence in these types of mesocaverns or caves of roots from living, non-toxic plants such as, but not limited to, ohia (*Metrosideros polymorpha*), maiapilo (*Capparis sandwichiana*), and aalii (*Dodonea viscosa*). All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave wolf spider.

(3)(i) Existing human-constructed features and structures within the boundaries of mapped units that required trenching, filling or excavation resulting in below-surface modification or alteration would not contain either of the primary constituent elements and are excluded from critical habitat designation. Such features and structures include but are not limited to: Homes and buildings for which the underlying bedrock has been altered for their construction or through incorporation of or connection to buried structural foundations, septic tanks, city sewage and drainage systems, or water or underground electrical supply corridors; paved roads; and areas previously or currently used as a quarry.

(ii) Areas that have been modified on the surface but without trenching, filling or excavation resulting in below-surface modification or alteration are included in the critical habitat designation, even if they are adjacent to areas that have undergone below-surface modification. Such areas include but are not limited to: Active or fallow agricultural lands; range land; golf courses; county and city parks; unimproved road; and undeveloped lands.

(4) Unit 1—Waikomo Unit, Island of Kauai (1,615 ha (3,991 ac)):

(i) *Unit 1A.* Unit 1A consists of boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(A) 451377, 2420941; 451318, 2421296; 451365, 2421383; 451432, 2421109; 451596, 2421040; 451959, 2421072; 452051, 2421203; 452003, 2421772; 452057, 2421775; 452169, 2421853; 452125, 2421972; 451884, 2422006; 452107, 2422210; 452088, 2422291; 452683, 2421992; 452828, 2422429; 452693, 2422516; 452580, 2422426; 452535, 2422471; 452566, 2422602; 452491, 2422655; 452558, 2422751; 452872, 2422984; 453183, 2422994; 453561, 2422770; 453689, 2422802; 453710, 2423076; 453803, 2423173; 453928, 2423094; 454010, 2423198; 453900, 2423337; 453989, 2423437; 454124, 2423472; 454142, 2423601; 454096, 2423765; 454199, 2423872; 454267, 2423643; 454452, 2423640; 454616, 2424086; 454780, 2424043; 454757, 2423914; 454891, 2423911; 454673, 2423458; 454987, 2423312; 454770, 2422941; 454834, 2422595; 454688, 2422555; 454631, 2422409; 454866, 2422399; 455030, 2422481; 455001, 2422349; 455009, 2422131; 455631, 2421763; 456040, 2421846; 456196, 2422136; 456445, 2422235; 456572, 2421329; 456982, 2421024; 457171, 2421036; 457345, 2420833; 457027, 2420606; 456763, 2420391; 456728, 2419912; 456456, 2419772; 455868, 2419764; 455633, 2419645; 455601, 2419531; 455389, 2419219; 455225, 2419029; 455014, 2418947; 455014, 2419015; 454875, 2419059; 454861, 2419151; 455014, 2419182; 455056, 2419329; 455001, 2419400; 454781, 2419487; 454388, 2419255; 453419, 2419161; 453425, 2419586; 453516, 2419934; 453495, 2420106; 453368, 2420082; 453384, 2419931; 453275, 2419923; 453275, 2419438; 453252, 2419031; 453114, 2419045; 453162, 2419267; 452950, 2419349; 453029, 2419550; 452799, 2419624; 452707, 2419428; 452638, 2419449; 452691, 2419590; 452540, 2419649; 452416, 2419487; 452294, 2419410; 452057, 2419393; 451918, 2419437; 451814, 2419420; 451685, 2419686; 451812, 2419796; 451712, 2419918; 451815, 2420032; 451796, 2420129; 451672, 2420235; 451733, 2420399; 451601, 2420492; 451558, 2420333; 451561, 2420058; 451614, 2420037; 451587, 2419912; 451516, 2419770; 451449, 2419696; 451188, 2419748; 451212, 2419865; 450884, 2419942; 450661, 2419968; 450603, 2419919; 450443, 2419921; 450202, 2419919; 449823, 2420156; 449805, 2420288; 449905, 2420389; 450560, 2420577; 451016, 2420683; 450974, 2420585; 451194, 2420502; 451201, 2420756; 451193, 2420887; 451377, 2420941.

(B) Excluding seven areas:

(*1*) Bounded by the following fifteen points (31 ha, 77 ac): 456695, 2420426; 456573, 2420330; 456388, 2420278; 456081, 2420300; 456051, 2420586; 456163, 2420674; 456259, 2420772; 456357, 2420895; 456412, 2420942; 456538, 2420879; 456570, 2420792; 456741, 2420763; 456682, 2420622; 456714, 2420574; 456695, 2420426.

(*2*) Bounded by the following fourteen points (1 ha, 3 ac): 454229, 2420036; 454177, 2420082; 454147, 2420126; 454158, 2420147; 454202, 2420185; 454250, 2420172; 454242, 2420136; 454231, 2420112; 454264, 2420082; 454294, 2420066; 454326, 2420085; 454332, 2420050; 454286, 2420025; 454229, 2420036.

(*3*) Bounded by the following seven points (2 ha, 5 ac): 452714, 2419850; 452561, 2419837; 452519, 2419846; 452504, 2419912; 452533, 2419989; 452613, 2419958; 452714, 2419850.

(*4*) Bounded by the following thirty-one points (16 ha, 38 ac): 452185, 2420755; 452280, 2420765; 452349, 2420719; 452402, 2420614; 452434, 2420595; 452451, 2420559; 452438, 2420516; 452462, 2420442; 452486, 2420421; 452498, 2420398; 452480, 2420334; 452412, 2420247; 452399, 2420223; 452435, 2420209; 452444, 2420139; 452467, 2420112; 452467, 2420069; 452443, 2420047; 452391, 2420052; 452288, 2420126; 452239, 2420219; 452191, 2420271; 452190, 2420397; 452177, 2420428; 452190, 2420478; 452215, 2420500; 452173, 2420538; 452193, 2420597; 452190, 2420654; 452158, 2420722; 452185, 2420755.

(*5*) Bounded by the following eleven points (17 ha, 14 ac): 454202; 2421942, 454138; 2421880, 454209; 2421804, 454226; 2421640, 454083; 2421628, 453679; 2421700, 453652; 2421875, 453771; 2421965, 453915; 2421937, 454078; 2422088, 454202; 2421942.

(*6*) Bounded by the following seven points (1 ha, 4 ac): 454850, 2419801; 454897, 2419736; 454922, 2419684; 454860, 2419633; 454825, 2419667; 454740, 2419694; 454850, 2419801.

(*7*) Bounded by the following five points (1 ha, 2 ac): 452149, 2419675; 452231, 2419635; 452180, 2419556; 452101, 2419583; 452149, 2419675.

(ii) Unit 1B (ha; 17 ac). Unit consists of twenty-one boundary points with the following coordinates in UTM Zone 4 with the units in meters using North American Datum of 1983 (NAD83): 454027, 2418515; 454106, 2418549; 454143, 2418484; 454378, 2418600; 454341, 2418842; 454405, 2418865; 454385, 2418971; 454483, 2418981; 454531, 2418957; 454517, 2418910; 454398, 2418787; 454409, 2418590; 454378, 2418573; 454341, 2418505; 454303, 2418512; 454262, 2418484; 454272, 2418426; 454170, 2418362; 454109, 2418338; 454055, 2418369; 454027, 2418515.

(5) Unit 2—Haula Unit, Island of Kauai (68 ha (168 ac)):

(i) Unit consists of 45 boundary points with the following coordinates in UTM Zone 4, with the units in meters, using North American Datum of 1983 (Nad83):

(ii) Starting on the coastline at approximately coordinates of: 458997, 2422152; follow: 458345, 2422341; 458686, 2422405; 458786, 2422373;

458934, 2422253; 459001, 2422151; 458997, 2422152; 457589, 2420990; 457575, 2420975; 457511, 2420984; 457631, 2421127; 457738, 2421168; 457900, 2421206; 458023, 2421343; 458023, 2421417; 457895, 2421435; 457803, 2421394; 457686, 2421405; 457637, 2421453; 457631, 2421540; 457678, 2421675; 457766, 2421821; 457908, 2421944; 458069, 2421867; 458216, 2421849; 458244, 2421886; 458253, 2421996; 458235, 2422079; 458299, 2422272; 458345, 2422341; 457589, 2420990; to approximately: 457590, 2420991 (coastline); follow coastline to the approximate coordinates of: 458494, 2421794; then follow: 458494, 2421795; 458495, 2421795; 458502, 2421802, 458492, 2421904; 458483, 2421987; 458566, 2422060; 458559, 2422190; 458630, 2422263; 458718, 2422262; 458805, 2422159; 458777, 2422115; 458686, 2422119; 458658, 2422060; 458667, 2421987; 458702, 2421920; to the coastline, approximately at: 458702, 2421919; follow coastline to beginning point: 458997, 2422152.

(6) Unit 3—Puu Keke Unit, Island of Kauai (14 ha (35 ac)):

(i) Unit consists of 14 boundary points with the following coordinates in UTM Zone 4, with the units in meters using North American Datum of 1983 (Nad83):

(ii) Follow the approximate coordinates: 457583, 2422071; 457631, 2422040; 457702, 2421952; 457543, 2421778; 457490, 2421812; 457400, 2421778; 457352, 2421693; 457380, 2421601; 457297, 2421518; 457115, 2421532; 457162, 2421817; 457279, 2421895; 457536, 2422014; 457583, 2422071.

(7) Note: Map 1—Units 1, 2, and 3 follows:

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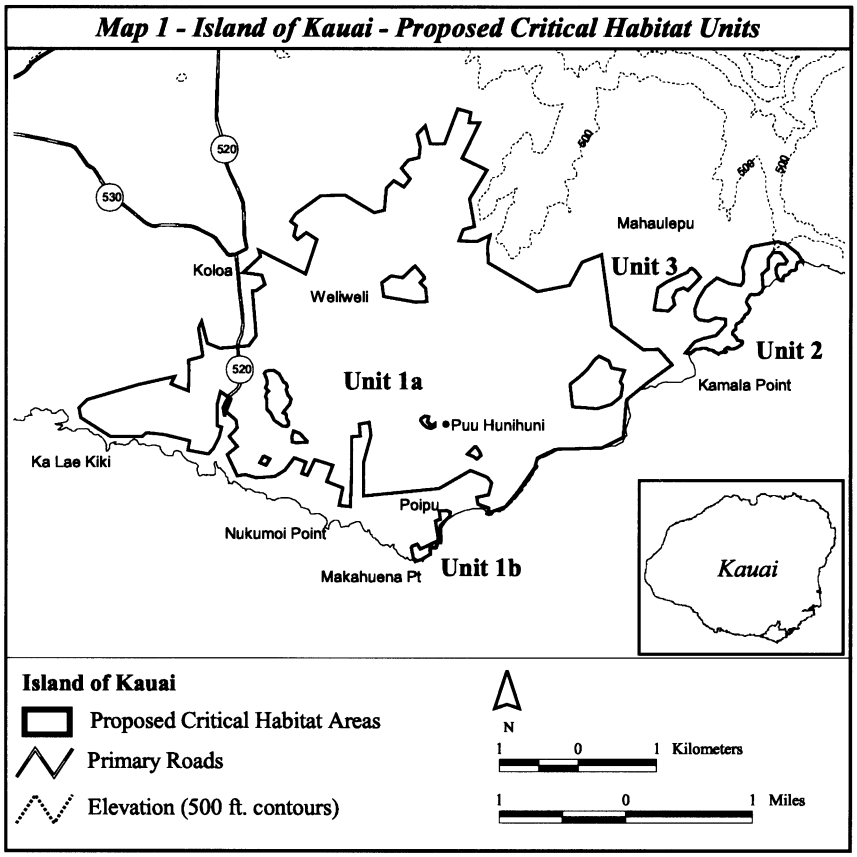

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* * * * *

(h) *Crustaceans.*

Kauai Cave Amphipod (*Spelaeorchestia koloana*)

The critical habitat designation and the primary constituent elements for the Kauai cave amphipod are exactly the same as those of the Kauai cave wolf spider. See the entry in paragraph (g) of this section for the Kauai cave wolf spider. All critical habitat areas contain one or more of the primary constituent elements for the Kauai cave amphipod.

* * * * *

Dated: March 12, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–6801 Filed 3–26–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 001128334–2048–07; I.D. 021202A]

RIN 0648–AN88

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP), specifically with regard to the straight set of gillnets in the Southeast U.S. Restricted Area in waters off the coasts of Georgia and Florida. The intent of this proposed rule is to prohibit straight sets of gillnets at night from November 15 through March 31, annually, to reduce the risk of entanglement of large whales, including the western North Atlantic right whale. NMFS is also announcing the availability of an Environmental Assessment (EA) and a Regulatory Impact Review (RIR).

DATES: Comments on the proposed prohibition of the straight set of gillnets must be postmarked or transmitted via facsimile by 5 p.m. Eastern Standard Time, on May 28, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Send comments on this proposed rule to the Chief, Protected Resources Division, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432.

Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and a table of the changes to the ALWTRP may be obtained by writing to Diane Borggaard, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432.

FOR FURTHER INFORMATION CONTACT: Katie Moore, NMFS, Southeast Region, 727–570–5312; Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Copies of the EA and RIR can be obtained from the ALWTRP Web site: http://www.nero.nmfs.gov/whaletrp/.

Background

The ALWTRP was developed pursuant to the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of whales by Atlantic lobster trap and gillnet fisheries. The background for the take reduction planning process and development of the ALWTRP is set out in the preamble to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), final (64 FR 7529, February 16, 1999), interim final (65 FR 80368, December 21, 2000), interim final (67 FR 1142, January 9, 2002), final (67 FR 1133, January 9, 2002), and final (67 FR 1300, January 10, 2002) rules implementing the ALWTRP. Copies of these documents and supporting EAs are available from the contacts noted in the **ADDRESSES** section of this proposed rule.

NMFS issued four biological opinions (BOs) on the multispecies, spiny dogfish, monkfish, and lobster fisheries on June 14, 2001, in accordance with section 7 of the Endangered Species Act (ESA). The BOs concluded that all four of the fisheries jeopardized the continued existence of the western North Atlantic right whale. The reasonable and prudent alternative (RPA) in the June 14, 2001, BOs included additional gear modifications for the northeast lobster trap fisheries and new gear modifications for the mid-Atlantic and southeast gillnet fisheries that are necessary to avoid jeopardizing the continued existence of western North Atlantic right whales. Southeast gillnet gear restrictions identified in this proposed rule address the RPA in an effort to reduce potential entanglements of western North Atlantic right whales.

Take Reduction Planning Activities in 2000 and 2001

Pursuant to section 118 (f)(7)(E) and (F) of the MMPA, NMFS has reconvened the ALWTRT periodically to monitor progress of the ALWTRP and to make recommendations for improvements. During the February 2000 meeting, the ALWTRT split into sub-groups covering the northeast, mid-Atlantic, and southeast areas. The recommendations of the northeast sub-group were addressed by the December 2000 interim final rule. The mid-Atlantic and southeast sub-groups met on August 25, 2000, and July 24, 2000, respectively, and provided meeting summaries with recommendations to the entire ALWTRT for review.

The ALWTRT met as a whole on June 27 and 28, 2001, to review the elements of the RPA required by the four BOs and recommend measures that would not only satisfy the requirements of the ESA and the four BOs, but would also satisfy the requirements of the MMPA. The MMPA provides the goals of reducing takes in commercial fishing operations to below the potential biological removal (PBR) level within 6 months of the ALWTRP's implementation and the achievement of a zero mortality rate within 5 years of ALWTRP implementation. For western North Atlantic right whales, these two goals are essentially the same since the PBR level is defined as zero. Consequently, the ALWTRT concurred that additional entanglement risk reduction is needed to comply with the MMPA.

NMFS published a proposed rule on October 1, 2001 (66 FR 49896), and final rule on January 10, 2002 (67 FR 1300), to amend the ALWTRP per the RPA and the Atlantic Large Whale Take Reduction Team's recommendations. The rule included provisions such as requiring weak links, temporal anchoring, and line diameter restrictions. The proposed rule also included provisions addressing the straight set of gillnets in the Southeast U.S. Restricted Area at night. Though NMFS prepared a thorough analysis of the straight set provision to include in the proposed rule's EA, NMFS accidentally left out the analysis in the EA. In order to ensure that the public had sufficient information to review and analyze the straight set provision in the proposed rule, NMFS removed the

straight set provision from the January 10, 2002, final rule. NMFS is issuing this proposed rule to provide the public adequate time to review and comment on the measure and the EA. The EA and RIR regarding the straight set provision are now available for public review, and NMFS is seeking public comments.

Changes Proposed for the ALWTRP for Gillnet Gear

Regulatory measures discussed by the southeast sub-group included applying northeast gear marking requirements to the southeast area and a restriction on gear deployment methods for non-shark gillnets during the western North Atlantic right whale calving season. The October 1, 2001, proposed rule discussed NMFS' decision to leave the existing gear marking requirement in place for the Southeast U.S. Restricted Area. Additional gillnet restrictions discussed but not adopted by the sub-group included time-area management, net modifications (e.g., weak links), and seasonal restrictions. In the development of the proposed rule, NMFS excluded these preliminary alternatives and several others from detailed analysis, because the alternatives were not considered to be within the scope of the action, technically feasible, or recommended by the ALWTRT.

The gillnet restriction recommended by the southeast sub-group was the prohibition of straight sets of gillnets at night from November 15 through March 31, annually, in the Southeast U.S. Restricted Area, (i.e., unless the exemption under 50 CFR 229.32 (f)(3)(iii), which relates to shark gillnets, applies). The Southeast U.S. Restricted Area consists of those waters from 27° 51′ N lat. (near Sebastian Inlet, FL) to 32° 00′ N lat. (near Savannah, Georgia) extending from the shore outward to 80° W long. Night means any time between one-half hour before sunset and one-half hour after sunrise, as per the ALWTRP (50 CFR 229.2).

A straight set is the deployment of a gillnet in a straight line, as opposed to the deployment of a gillnet in a circular manner, for example, around a school of fish. Both deployment types are currently fished in the proposed management area, the U.S. Restricted Area, which includes a nursery area for mothers and calves. Right whales generally occur in this area from November 15 through March 31. A prohibition during that time-area of the gear types with which the right whale is known to have become entangled would afford additional protection to the concentrations of western North Atlantic right whales. NMFS believes that straight set gillnets deployed during daytime are of very minimal threat to whales. Such gear is retrieved within about one-half hour of every set, and thus the fisher would be on-site in the possible event of an entanglement. Straight sets at night pose a higher level of risk of entanglement to whales than strike sets or straight sets during the day, because fishers are not as actively involved with straight set gear (in comparison to the strike set method used in southeast Atlantic waters), and whales are much more difficult to spot at night due to darkness. Through the proposed rule, NMFS aims to reduce the potential for the entanglement of western North Atlantic right whales in straight set gillnet gear. Due to the gear restrictions, the proposed rule will reduce the likelihood of effort influx into the fishery in the future, thereby further reducing the potential likelihood of entanglements.

Figure 1 shows the boundaries for the Southeast U.S. Restricted Area. Currently the shark gillnet fishery is regulated using these boundaries (50 CFR 229.32 (f)(1)).

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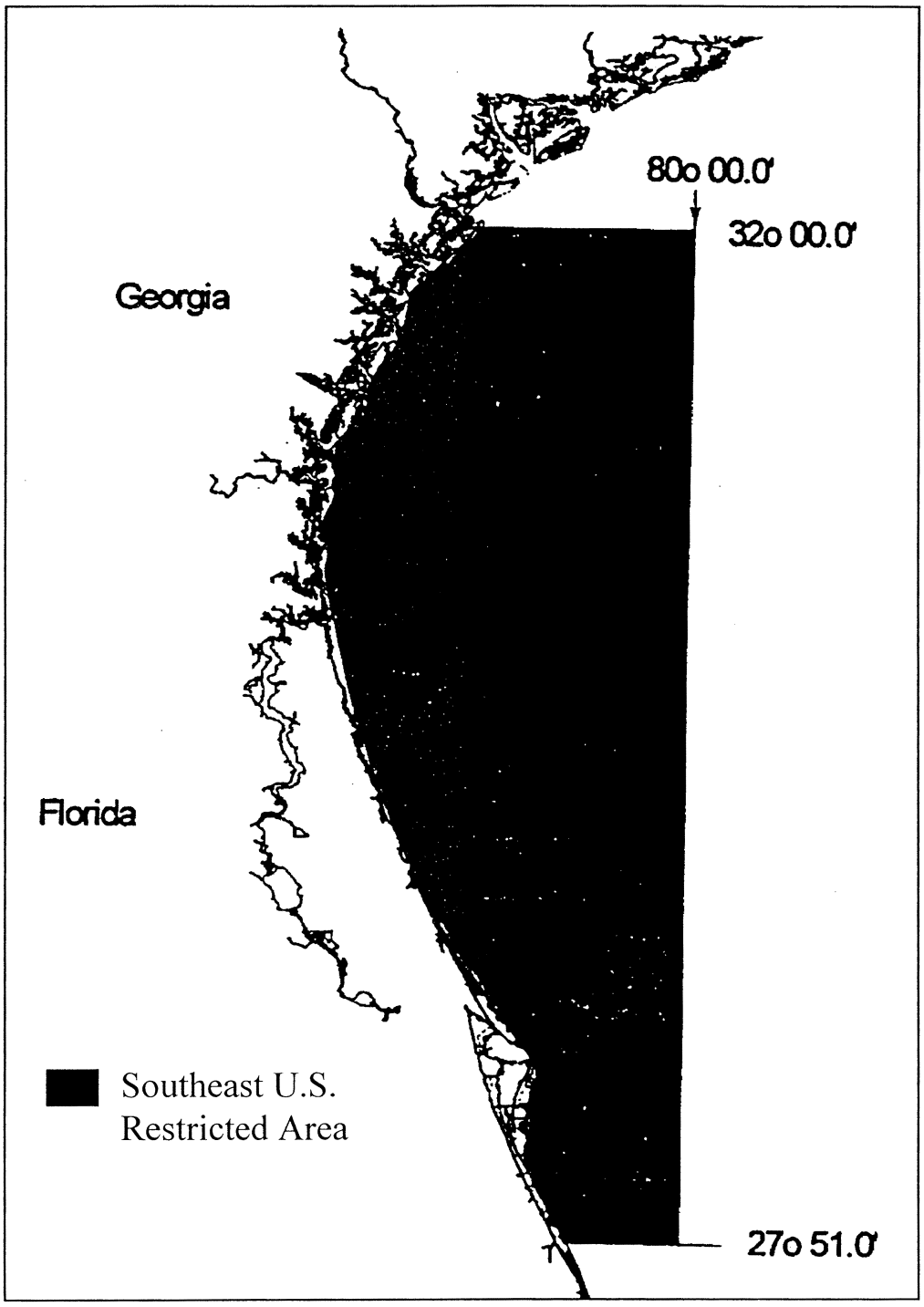
Figure 1



November 15 to March 31 Straight Set Gillnet Restrictions

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Classification

This proposed rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

The MMPA provides the statutory basis for the rule. The proposed rule would prohibit the use of straight set gillnets in the Southeast U.S. Restricted Area at night from November 15 through March 31, annually, unless the fishing activity was exempted under 50 CFR 229.32 (f)(3)(iii), which pertains to restrictions on shark gillnet fishing.

The objective of the proposed rule is to eliminate serious injuries or mortalities of western North Atlantic right whales attributable to entanglements with fishing gear and incorporates the time and area during which right whale calves are born.

Available data do not demonstrate that the fishing behavior or methodology restricted by the proposed rule is utilized to a great extent in the restricted area. Virtually all recorded gillnet harvests from this area and season are attributed to runaround gillnets and not straight set gillnets. Less than $133 per year of gross revenues in total can potentially be attributed to the use of straight set gillnets. Further, data on average trip times, soak times, and vessel characteristics indicate that the fishery is primarily prosecuted as a day fishery. Therefore, any direct economic impacts on the fishery will be minimal since the fishery does not substantially operate in the manner being restricted.

Generally, a fish-harvesting business is considered a small business if it is independently owned and operated, not dominant in its field of operation, and has annual receipts not in excess of $3.5 million. One hundred two unique entities (vessels or persons) have reported landings in this fishery over the 1997-2000 fishing seasons. Total dockside value of commercial harvests by these entities from all fishing activities and all gears averaged from $16,000 to $24,000 per year over this period. The maximum gross revenues were less than $300,000. All operations would be considered small business entities. Thus, business operations in this fishery consist solely of small business entities.

The determination of significant economic impact can be ascertained by examining two criteria: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All business entities participating in the respective area of the south Atlantic gillnet fishery are considered small business entities. Thus, the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The predominant harvest methodology in this fishery is runaround (i.e., strike) gillnets and day trips and not the methodology restricted by the proposed rule. Less than $500, or $133 per year, of reported landings from all participants over the 1997-2000 fishing seasons is potentially attributable to straight set gillnets. Participation ranged from 41 to 62 vessels during this period, for an average of less than $4 per vessel. Whether spread over multiple participants or attributed to a single vessel, it is clear that restricting the use of this gear will not significantly reduce profits for a substantial number of small entities. On this basis, the proposed rule may be adjudged not to have a significant economic impact on a substantial number of small entities.

Accordingly, an initial regulatory flexibility analysis was not prepared. Copies of the RIR are available (see **ADDRESSES**).

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals.

Dated: March 19, 2002.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

2. In § 229.3, paragraph (k) is revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(k) It is prohibited to fish with gillnet gear in the areas and for the times specified in § 229.32(f)(1) through (f)(4), unless the gear or the person with gillnet gear complies with the gear marking requirements specified in § 229.32(f)(2), the requirements for observer coverage as specified in §229.32(f)(3), and the closures, requirements, and other restrictions as specified in 229.32(f)(4).

* * * * *

3. In § 229.32, the heading of paragraph (f) and paragraph (f)(3) are revised; and paragraph (f)(4) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) *Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Observer Area.** * *

* * * * *

(3) *Observer requirement.*No person may fish with shark gillnet gear in the southeast U.S. observer area from November 15 through March 31 of the following year unless the operator of the vessel calls the SE Regional Office in St. Petersburg, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Regional Office requests that an observer be taken on board a vessel during a fishing trip at any time from November 15 through March 31 of the following year, no person may fish with shark gillnet gear aboard that vessel in the southeast U.S. observer area unless an observer is on board that vessel during the trip.

(4) *Restricted Period, closure and restrictions, and exemption.*

(i) *Restricted period.* The restricted period for the southeast U.S. restricted area is from November 15 through March 31 of the following year, unless the Assistant Administrator revises this restricted period in accordance with paragraph (g) of this section.

(ii) *Closure for shark gillnet gear.*Except as provided under paragraph (f)(4)(iv) of this section, no person may fish with shark gillnet gear in the southeast U.S. restricted area during the restricted period.

(iii) *Restrictions for straight sets.*Except as provided for shark gillnet gear under paragraph (f)(4)(iv) of this section, no person may fish with a straight set of gillnet gear at night in the southeast U.S. restricted area during the restricted period. A straight set is defined as a set in which the gillnet is placed in a line in the water column, as

opposed to a circular set in which the gillnet is placed to encircle an area in the water column.

(iv) *Special provision for strikenets.*Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m).

(B) Each set is made under the observation of a spotter plane.

(C) No net is set within 3 nautical miles of a right, humpback, fin or minke whale.

(D) If a right, humpback, fin or minke whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

[FR Doc. 02–7129 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 59

Wednesday, March 27, 2002

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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality; Meeting

AGENCY: Natural Resources Conservation Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to discuss critical air quality issues in relation to agriculture. The emphasis of the meeting will be on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, May 1, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, May 2, 2002, and continue from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or before April 19, 2002.

ADDRESSES: On May 1, 2002, the meeting will be held in the Williamsburg Room in the Jamie L. Whitten Federal Building at 12th Street and Jefferson Dr., SW., Washington, DC 20250. On May 2, 2002, the meeting will be held in Room 333 at the Hall of States, 444 North Capitol Street, Washington, DC 20001. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA/NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013. Due to the heightened security measures in place, submission of the names and affiliations for those planning to attend the meeting on May 1, 2002, will expedite entry into the Federal building.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the May 1 and 2, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at: *http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.*

Draft Agenda of the May 1 and 2 Meeting

A. Welcome to Washington, DC

- Local officials

B. Approve minutes of the Phoenix, Arizona, January 16–17, 2002, AAQTF meeting

C. EPA Update

- EPA official—Expectations regarding regulation of agriculture
- National Academy of Sciences Scientific Assessment update
- Regional Planning Organizations update—potential impacts to agriculture
- Title V update
- Update on monitoring and speciation work across country
- Comprehensive Environmental Response, Compensation, and Liability Act; Emergency Planning and Community Right-to-Know Act update/discussion

D. Subcommittee Business

- Research Priorities and Oversight Subcommittee
- Emissions Factors Subcommittee
- Concentrated Animal Feeding Operation Subcommittee
- Voluntary/Incentive Based Program Subcommittee
- Follow-up Subcommittee
- Agricultural Burning Subcommittee
- Title V Subcommittee
- Monitoring Subcommittee
- Implementation Subcommittee

E. New Topics

- President's Global Climate Change Initiative
- Odor control and particulate capture/dispersion—windbreaks, other BMPs
- Iowa CAFO study
- Regulatory choices at the State level

F. Next Meeting, time/place

G. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than April 19, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than April 19, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, statutes enforced by USDA also prohibit discrimination on the basis of political beliefs and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410; or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on March 7, 2002.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–7279 Filed 3–26–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1211]

Grant of Authority; Establishment of a Foreign-Trade Zone, Jefferson County, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the North Central Pennsylvania Regional Planning and Development Commission, a Pennsylvania not-for-profit corporation (the Grantee), has made application to the Board (FTZ Docket 19–2001, filed 4/27/01), requesting the establishment of a foreign-trade zone at a site in Jefferson County, Pennsylvania, adjacent to the Pittsburgh Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 23001, 5/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 254, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 2002.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 02–7333 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocations in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Heavy Forged Hand Tools (hammers/sledges, and picks/mattocks) from the People's Republic of China and Certain Preserved Mushrooms from Indonesia.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
France:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/01–1/31/02
Usinor S.A.	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/01–1/31/02
Steel Authority of India, Ltd.	
Certain Preserved Mushrooms, A–533–813	2/1/01–1/31/02
Agro Dutch Foods, Ltd.	
Weikfield Agro Products, Ltd.	
Himalaya International, Ltd.	
Stainless Steel Bar, A–533–810	2/1/01–1/31/02
Isibars Limited	
Mukand Ltd.	
Venus Wire Industries Limited	
Viraj Alloys, Ltd.	
Viraj Viraj Forgings, Ltd.	
Viraj Impoexpo Ltd.	
Viraj Smelting	
Viraj Profiles	
Viraj Group	
Forged Stainless Steel Flanges, A–533–809	2/1/01–1/31/02
Metal Forging Rings & Bearings	
Snowdrop Trading, Pvt. Ltd.	
Viraj Group	
Bhansali Ferromet Pvt. Ltd.	
Echjay Forgings Ltd./Pushpaman Exports	

	Period to be reviewed
Isibars, Ltd.	
Panchmahal Steel, Ltd.	
Patheja Forgings & auto Parts, Ltd.	
Viraj Forgings, Inc.	
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/01–1/31/02
PT Gunawan Dianjaya Steel	
PT Jaya Pari Steel Corporation	
PT Krakatau Steel	
Certain Preserved Mushrooms, A–560–802	2/1/01–1/31/02
PT IndoEvergreen	
PT Zeta Argo Corporation	
PT Dieng Djaya	
PT Surya Jaya	
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/01–1/31/02
Palini B Bertoli S.p.A.	
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	8/2/00–1/31/02
Union Piping S.P.A.	
Coprosider S.P.A.	
Japan:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/01–1/31/02
Kawasaki Steel Corporation	
Kobe Steel, Ltd.	
Nippon Steel Corporation	
NKK Corporation	
Sumitomo Metal Industries, Ltd.	
Certain Stainless Steel Bar, A–588–833	2/1/01–1/31/02
Aichi Steel Corporation	
Mechanical Transfer Presses, A–588–810	2/1/01–1/31/02
Hitachi Zosen Corporation	
Hitachi Zosen Fukui Corp. d/b/a H & F Corp.	
Komatsu, Ltd.	
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	12/27/00–1/31/02
Schulz (Mfg.) Sdn. Bhd.	
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/01–1/31/02
Dongkuk Steel Mill Co., Ltd.	
The People's Republic of China: Axes/adzes,* A–570–803	2/1/01–1/31/02
Tianjin Machinery Import & Export Corp.	
Bars/wedges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Hammers/sledges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Picks/mattocks,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Certain Preserved Mushrooms,[1] A–570–851	2/1/01–1/31/02
China Processed Food Import & Export Co.	
Compania Envasadora del Atlantico	
Gerber Food (Yunnan) Co., Ltd.	
Green Fresh Foods (Zhangzhou) Co., Ltd.	
Raoping Xingyu Foods, Co., Ltd.	
Shantou Hongda Industrial General Corporation	
Shenxian Dongxing Foods Co., Ltd.	
Natural Bristle Paintbrushes and Brush Heads,[2] A–570–501	2/1/01–1/31/02
Hunan Provincial Native Products Import & Export Corporation	
Hebei Founder Import & Export Company	
Countervailing Duty Proceedings: None.	
Suspension Agreements: None.	

*If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of natural bristle paintbrushes and brush heads from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspensed investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 20, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–7332 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–024. *Applicant:* Howard Hughes Medical Institute, Chevy Chase, MD 20815–6789. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* October 4, 2001.

Docket Number: 01–027. *Applicant:* University of Cincinnati, Cincinnati, OH 45267–0521. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* June 22, 2001.

Docket Number: 02–002. *Applicant:* Fox Chase Cancer Center, Philadelphia, PA 19111. *Instrument:* Electron Microscope, Model Tecnai 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* November 30, 2001.

Docket Number: 02–003. *Applicant:* Albert Einstein College of Medicine of Yeshiva University, Bronx, NY 10461. *Instrument:* Electron Microscope, Model Tecnai 20. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* March 30, 2001.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–7334 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032002B]

Endangered Species; Permits

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

ACTION: Receipt of request to modify research and enhancement permit 1266.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1266) from John Glass, of REMSA, Inc. (1266).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 26, 2002.

ADDRESSES: Written comments on the modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Threatened and endangered Green turtle (*Chelonia mydas*)
Endangered Hawksbill turtle (*Eretmochelys imbricata*)
Endangered Kemp's ridley turtle (*Lepidochelys kempii*)
Endangered Leatherback turtle (*Dermochelys coriacea*)
Threatened Loggerhead turtle (*Caretta caretta*)

The applicant requests a modification to Permit 1266. Permit 1266 authorizes the capture by trawl, handle, flipper tag and release of sea turtles while removing them from the path of hopper dredges. The Permit authorized the take of 30 loggerhead, 7 green, 5 Kemp's ridleys, 4 hawksbills and 4 leatherback sea turtles. These animals were measured, flipper tagged and released. Modification #1 would increase the authorized annual take to 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles for the purpose of moving them out of the path of hopper dredges and to tag the sea turtles for tracking purposes. The applicant would also begin passive integrated transponder (PIT) tagging the sea turtles.

Dated: March 21, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7341 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032102C]

Marine Mammals; File Application No. 1004–1656

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

ACTION: Notice of extension of comment period.

SUMMARY: The National Marine Fisheries Service is extending the comment period for the application submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, to import two killer whales (*Orcinus orca*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before April 11, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Glouster, MA, 01930–2298 (978/281–9116).

Written comments or requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan,(301/713–2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

A notice of receipt of this application was published on November 30, 2001 (66 FR 59781) and the comment period closed on December 31, 2001. Based on substantive comments received during the initial comment period, NMFS requested additional information from the applicant and NMFS attempted to provide the additional information by mail to commenters who had expressed interest in the information. The comment period was reopened on February 25, 2002 (67 FR 8526) to close March 27, 2002. Due to an unforseen delay with the mail, this information did not reach the intended recipients in a timely manner. NMFS reviewed the situation and has determined that in this case, there is cause to provide for an extension of the comment period, allowing the interested parties to review the additional information and provide comments. In extending this comment period NMFS finds that a public hearing is not warranted because the issues raised by the comments can be clarified in writing. However, NMFS is providing through this notice an opportunity for additional written comments.

Dated: March 22, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7340 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Application for Patent Examiners—Job Application Rating System (JARS)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–308–7400; by facsimile at 703–308–7407; or by e-mail to *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Vivian Clark, Policy, Analysis & Automation Division, Office of Human Resources, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–305–8227; or by e-mail to *vivian.clark@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Job Application Rating System (JARS) is a system by which the USPTO can rapidly review applications for employment of entry-level patent examiners. The Office of Human Resources (OHR), armed with a recommendation from a Supervisory Patent Examiner (SPE) can, in turn, rapidly make an offer of employment and support hiring actions with necessary administrative action. Over the past three fiscal years, JARS has enabled the Patent Corps to hire more than 1,600 entry-level patent examiners.

Since the inception of JARS, upgrades have increased the flexibility of the system and the speed and ease with which the Office of Human Resources can support hiring recommendations. Specifically, JARS now allows applicants to update personal information without submitting a new application. Additional form letters and reports are now available, date tracking of previous employment is significantly improved; and status tracking improvements enable users to tell who has previously updated the record and when. Future JARS upgrades will be conducted to further enhance the system.

In the current employment environment, information technology professionals and engineering graduates are in great demand. The USPTO is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to perform patent examination work. Consequently, it is imperative that every available technology be employed if the USPTO is to remain competitive, meet the hiring goal, and fulfill the agency's congressional commitment to reduce the pendency rate for the examination of patent applications. The information supplied to the USPTO by an applicant seeking a patent examiner position with the USPTO assists the Human Resources Specialists and hiring managers in determining whether an applicant possesses the basic qualification requirements for the patent examiner position.

JARS provides the USPTO a user-friendly online employment application process for applicants and enables the USPTO to process hiring actions in an efficient and timely manner. The online application provides an electronic real-time candidate inventory that allows the USPTO to review applications from potential applicants almost instantaneously. Given the immediate hiring need of the Patent Examining Corps, time consumed in the mail distribution system or paper review of applications delays the decision-making process by several weeks. The JARS system results in increased speed and accuracy in the employment process, in addition to streamlining labor and reducing costs.

The use of the JARS online application fully complies with 5 U.S.C. 2301, which requires adequate public notice to assure open competition by guaranteeing that necessary employment information will be accessible and available to the public on inquire. The JARS online application is fully compliant with section 508 (29 U.S.C. 794d), which requires agencies to provide disabled employees and members of the public access to information that is comparable to the access available to others.

Since the JARS online application is used as an alternative form of employment application, the collection and use of the information requires OMB approval as outlined in Section 5.1 of the Delegated Examining Operations Handbook. The Handbook provides guidance to agencies under a delegated examining authority by OPM, under the provisions of Title 5, U.S. Code, Chapter 11, Section 1104.

II. Method of Collection

The application information is collected electronically from the applicant. The application form may be completed online and then transmitted to the USPTO electronically, via the Internet. For those applicants who do not have access to a personal computer, applications are available in the Personnel Office at the USPTO, or the applicant can go to the local library to complete an application.

III. Data

OMB Number: 0651–0042.

Form Number(s): PTO–2041.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 5,000 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes to complete the employment application, depending upon the situation. There is one form associated with this information collection, Form PTO–2041.

Estimated Total Annual Respondent Burden Hours: 2,500 hours per year.

Estimated Total Annual Respondent Cost Burden: $75,675. Using the median hourly rate for scientists and engineers of $30.27, according to the Bureau of Labor Statistics, the USPTO estimates $75,675 per year for salary costs associated with respondents.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Electronic Employment Application	30	5,000	2,500
TOTAL	.....	5,000	2,500

Estimated Total Annual Nonhour Respondent Cost Burden: $0. (There are no capitol start-up or maintenance costs associated with this information collection.)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 22, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–7319 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber and Textile Products Produced or Manufactured in India

March 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002

Effective on March 28, 2002, you are directed to reduce the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
Levels in Group I	
334/634	190,231 dozen.
338/339	4,729,459 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–7331 Filed 3–26–02 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Request of the National Futures Association for Approval of Interpretive Notice to NFA Compliance Rule 2–9: Supervision of the Use of Automated Order Routing Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comment.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') has determined, pursuant to section 17(j) of the Commodity Exchange Act (the ''Act''), to review the National Futures Association's (''NFA's'') proposed Interpretive Notice of (the ''Interpretive Notice'') to its Compliance Rule 2–9 regarding supervision of the use of automated order routing systems (''AORSs'') that route orders through futures commission merchants (''FCMs''). The Interpretive Notice would require that NFA members adopt and enforce written procedures in the areas of security, capacity, and credit and risk management controls in connection with AORSs, but it provides flexibility for members to design procedures tailored to their own circumstances. Because NFA's policy is to set standards rather than to require specific technology, other procedures than those described in the Interpretive Notice may comply with the general standards for supervisory responsibilities imposed by NFA Compliance Rule 2–9. The proposed Interpretive Notice would become effective upon approval by the Commission. Therefore, the Commission has determined to provide an opportunity for public comment prior to its consideration of the Interpretive Notice.

DATES: Comments must be received by April 26, 2002.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made too ''NFA Interpretive Notice Regarding Supervision of Automated Order Routing Systems.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450, facsimile number: (202) 418–5536, electronic mail: *Ipatent@cftc.gov,* or *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 1, 2002, NFA submitted to the Commission for its approval, pursuant to section 17(j) of the Act, NFA's proposed Interpretive Notice to its Compliance Rule 2–9 regarding supervision of the use of AORSs that route orders through FCMs. NFA's submission indicates that the Interpretive Notice would become effective upon approval by the Commission. NFA Compliance Rule 2–9 requires, in relevant part, that ''(e)ach Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.'' NFA believes that supervisory standards do not change with the medium used, but that the manner in which those standards are applied may be affected by technology. In order to fulfill their supervisory obligations, NFA members using AORSs must adopt and enforce written procedures to examine the security,

capacity and credit and risk management controls provided by the firm's AORSs.

NFA notes that the proposed Interpretive Notice applies to AORSs that are within an NFA member's control (including those provided by an application service provider or an independent software vendor). While a member would not be responsible for an AORS chosen by the customer and not under the member's control, the member would be required to adopt procedures that could reasonably be expected to address the trading, clearing and other risks arising from its customer relationship.

II. Description of the Interpretive Release

The proposed Interpretive Notice would require that NFA members adopt and enforce written procedures in three general areas: (1) Security procedures to protect the reliability and confidentiality of customer orders and account information; (2) capacity procedures to maintain adequate personnel and facilities for timely and efficient delivery of orders and reporting of executions, as well as for timely handling of customer complaints; and (3) credit and risk management controls to prevent customers from entering trades that could create undue financial risks for the NFA member or its other customers.

Without specifying the manner in which they are to be implemented, the proposed Interpretive Notice describes a set of essential functions under each general heading and gives non-exclusive examples to illustrate. The essential functions that are listed under security procedures include: (1) Authentication of the user; (2) encryption or equivalent protections; (3) firewalls or equivalent protections; (4) means for customers to give notice that a person is no longer authorized; (5) periodic testing; and (6) administrative oversight and supervision. The essential functions that are listed under capacity procedures include: (1) Regular evaluation of the system's capacity (with increases as needed); (2) monitoring of system capacity and performance; (3) follow-up on customer access complaints; (4) disaster recovery and redundancies; (5) prompt notice to customers of operational difficulties; and (6) advance disclosure of factors that could stress the system. The essential functions that are listed under credit and risk management controls are: (1) Pre-execution controls (to be imposed when appropriate); (2) post-execution controls and trade monitoring; (3) extra precautions for direct-access systems; and (4) review of AORS controls in conjunction with the member's regular credit and risk control procedures.

NFA has also revised the required annual self-examination to include the WebTrust℠™ Self-Assessment Questionnaire, which was developed by the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. WebTrust℠™ states that it is ''for use by electronic commerce service providers to document their business practices/transaction integrity disclosures, policies, procedures and monitoring.''

As noted earlier, the proposed Interpretive Release would become effective upon approval by the Commission. Accordingly, the Commission seeks comments on the proposed Interpretive Notice to NFA Compliance Rule 2–9 regarding supervision of the use of AORs.

Copies of the proposed Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address by telephoning (202) 418–5100.

Issued in Washington, DC on March 21, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–7345 Filed 3–26–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form (SF) 255; Architect-Engineer and Related Services Questionnaire for Specific Project. A request for public comments was published in the **Federal Register** at 67 FR 6011 on February 8, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Annual Responses: 20,000.
Hours Per Response: 1.2.
Total Burden Hours: 24,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7335 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor use of Government supply sources. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Respondents: 300.
Responses Per Respondent: 7.
Annual Responses: 2,100.
Hours Per Response: .25.
Total Burden Hours: 525.

*Obtaining Copies of Proposals:*Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7336 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0044]

Federal Acquisition Regulation; Submission for OMB Review; Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bid/offer acceptance period. A request for public comments was published in the **Federal Register** at 67 FR 6234, on February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services

Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by providing a period of time in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Respondents: 308.

Responses Per Respondent: 40.

Annual Responses: 12,320.

Hours Per Response: .017.

Total Burden Hours: 209.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: March 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7337 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses Per Respondent: 2.

Annual Responses: 140.

Hours Per Response: .5.

Total Burden Hours: 70.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: March 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7338 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the US Homeland will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will review the Department of Defense's (DoD) responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7303 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense is tentatively scheduled to meet in closed session on April 29–30, 2002; May 20–21, 2002; June 18–19, 2002; and July 15–16, 2002; at the Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the DSB Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7304 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately $1.2 million will be available for renewable energy programs and an additional $3 million will be available for energy efficiency programs for awards under this solicitation in fiscal year 2002. Areas of interest involving renewable energy include wind, hydrogen and geothermal technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be subject to the objective merit review procedures for the *Office of Energy Efficiency and Renewable Energy (EERE).* Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued in the beginning of April 2002. The solicitation will include specific funding totals for each program area of interest. Applications will be due for the various program areas in mid-May 2002. The formal solicitation will be disseminated electronically as solicitation number DE–PS01–02EE10846 through *DOE's e-Center Web site and Industry Interactive Procurement System (IIPS)* located at *http://e-center.doe.gov.* You can get more information about IIPS or register your organization to use IIPS on the e-center home page. Registration is a prerequisite to the submission of an application and applicants are encouraged to register as soon as possible. A users' manual for IIIPS can be found under the help button on the main e-Center page. Assistance for IIPS related problems is available through the IIPS help desk from 8 am to 8 pm, Monday through Friday, at 1–800–683–0751.

FOR FURTHER INFORMATION CONTACT: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention ME–642.1 (Larry Lansing or Tova Stein, EERE–2002), 1000 Independence Ave., SW., Washington, DC 20585, e-mail: *eere.grants@pr.doe.gov.* Questions or comments should be categorized as *administrative* or *financial assistance related.* Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Lansing (for program Areas of Interest 1 and 4) or Ms. Stein (for Program Areas of Interest 2, 3 and 8)). The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments coordinated

with Mr. Lansing or Ms. Stein will be considered.

SUPPLEMENTARY INFORMATION: EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) Stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy; (3) disseminate information to states, local governments and the public on EERE programs and technologies; and (4) address barriers to markets for EERE technologies. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is: (1) To enable U.S. industry to complete the research, testing and field verification needed to fully develop advanced wind energy technologies that lead the world in cost effectiveness and reliability; (2) dramatically reduce dependence on foreign oil by developing a next generation hydrogen energy system to meet the President's National Energy Policy goal of reliable, affordable and environmentally sound energy for America's future; (3) provide unbiased technical assessments and information to federal, regional, and state decision makers on the benefits and costs of electric utility restructuring issues related to renewable energy and energy efficiency; (4) setting goals for the President's energy vision as part of the National Energy Policy and the Strategic Program Review; (5) develop renewable energy generation technologies capable of economically increasing the deployment of non-hydroelectric renewable generation capacity to a total of at least 25,000 megawatts by 2010; and (6) work in partnership with U.S. industry to establish geothermal energy as an economically competitive contributor to the U.S. energy supply. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, hydrogen and geothermal technologies. Also, applications will be requested to perform information dissemination, public outreach and related technical assistance for: the co-sponsorship of conferences involving the Power Technologies sector; Power Technologies analysis collaborative incentives analysis, information dissemination and outreach; and electricity restructuring.

Office of Industrial Technologies (OIT)—The mission of this Office of Industrial Technologies (OIT) is to improve energy efficiency, environmental performance, and productivity of materials and process industries by developing and delivering advanced science and technology options that will: (1) Lower raw material and depletable energy use per unit output; (2) improve labor and capital productivity; and (3) reduce the generation of wastes and pollutants. OIT accomplishes its mission through its Industries: aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture-biobased products, and mining. At the national level, OIT has successfully facilitated the development of industry visions and technology roadmaps with these nine industries that are called the ''vision industries.'' Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The primary mission of this Office operates several programs to help promote the introduction of alternative fuel and advanced fuel and advance vehicle technology (fuels, vehicles, infrastructure) into the domestic transportation system in a safe, economical, and businesslike manner. OTT also supports the deployment of technologies, providing needed support at critical points in the transition of technologies from the laboratory to the marketplace. In addition, OTT implements many activities related to the alternative fuel provisions of the Energy Policy Act of 1992 (EPAct), including the Clean Cities program, federal fleet programs, analytical work, testing and evaluation, and regulatory efforts. Financial assistance applications will be requested to support information, dissemination and outreach activities for: co-sponsorship of conferences and events; training for local clean cities coalitions; and information dissemination and public outreach for niche markets.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: Addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials and policy makers at colleges and universities, State and Local governments, elementary and secondary schools, and public and other low-income housing.

Federal Energy Management Program (FEMP)—The mission of the Federal Energy Management Program (FEMP) is to reduce the cost and environmental impact of government resource use by advancing energy efficiency and water conservation, promoting the use of renewable energy and managing utility costs in Federal buildings, facilities and operations. This program supports the Department's priority to lead by example through the government's own actions. FEMP accomplishes this mission, in part, by providing guidance on the use of effective energy saving technologies. Lighting systems consume approximately 40% of total building electricity, on a national average, and represent the largest single opportunity for reducing the energy use of Federal facilities. This work will provide certification of lighting professionals to help ensure that new and retrofit lighting projects exhibit the highest degree of energy efficiency and effectiveness to meet the President's National Energy Policy goal of reducing

the cost of government by reducing energy use in federal facilities. FEMP also promotes Federal leadership in energy management and increasing awareness and energy management expertise in the Federal sector by providing technical assistance to senior FEMP management and federal facility energy managers which requires technology transfer and information dissemination to broad audiences. Financial assistance will be requested to support several specific program areas such as a national lighting certification program for lighting professionals.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html.*

Issued in Washington, DC on March 21, 2002.

Beth Tomasoni,

Acting Director, Operations Division B, Office of Headquarters Procurement Services.

[FR Doc. 02–7299 Filed 3–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF01–1–000]

Dominion Transmission, Inc.; Notice of Site Visits

March 21, 2002.

On April 2 through April 4, 2002, and April 16 through April 17, 2002, the staff of the Office of Energy Projects will conduct pre-filing site visits of Dominion Transmission, Inc.'s (Dominion) Greenbrier Pipeline Project in Virginia and North Carolina. The project area will be inspected by automobile and on foot, as appropriate. The staff also plans to attend two Open Houses being held by Dominion on April 2 and 16 at the following locations:

April 2, 2002: Laurel Park High School, 280 Laurel Park Drive, Martinsville, Virginia 276 632–7216.

April 16, 2002: City of Eden Municipal Building, 308 East Stadium Drive, Eden, North Carolina 336 623–2110.

These Open Houses will start at 6 p.m.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at (202) 208–1088.

For information concerning the Open Houses contact Sean R. Sleigh, Certificates Manager for Dominion at (800) 624–3101 or (304) 627–3462.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7309 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–71–000]

State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents; Notice of Complaint

March 21, 2002

Take notice that on March 20, 2002, The State Of California, ex rel. Bill Lockyer, Attorney General of the State of California (Attorney General), submitted a Complaint alleging that sellers of energy and ancillary services to the California Power Exchange (PX), the California Independent System Operator (ISO), and the California Energy Resources Scheduling Division of the California Department of Resources (CERS) have violated Section 205(c) of the Federal Power Act (16 U.S.C. Section 824d(c)) and an express condition of their grants of market-based rate authority by failing to file their rates in the manner required by law. The Complaint alleges that Respondents' pro forma market-based rate schedules fail to provide FERC an adequate opportunity to determine in advance whether their rates are just and reasonable, and fail to provide the public with adequate notice of the rates to be charged. The Complaint further alleges that the Respondents' quarterly transaction reports, filed by up to four months after the completion of a market-based transaction, do not cure the statutory failure to file all rates prior to the time service commences. The Complaint further alleges that, even if quarterly, after-the-fact reporting of rates were found to comply with Section 205, sellers have failed to report transaction-specific information on their sales to the ISO, PX, and CERS, as required by FERC, negating any claim that their rates are on file. The Complaint seeks an order requiring sellers to: comply with the Section 205 rate filing requirement on a prospective basis; provide transaction-specific information to FERC on all sales to the ISO, PX, and CERS in calendar years 2000–2001; and, to the extent any rates charged are found to exceed just and reasonable levels, refund the difference between the rates charged and a just and reasonable rate, plus interest.

Copies of the Complaint were served via e-mail on all parties to Docket Nos. EL00–95–000 *et al.* A copy of the Complaint is available on the web site of the California Department of Justice (www.caag.state.ca.us).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 9, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7307 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000; EL00–98–000]

San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference

March 20, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate a discussion between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on April 4 and 5, 2002, beginning at 9 a.m. This technical conference is to assist the CAISO in preparation of its May 1, 2002, filing, as required by Commission order 97 FERC 61,275 (2001).

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at ''*robert.pease@ferc.gov*.'' No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7306 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–042, Project No. 943–075]

Public Utility District No.1 of Chelan County, Washington; Notice of Availability of Environmental Assessment

March 21, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed Public Utility District No.1 of Chelan County's applications for license amendment to install small turbines in fishway attraction water conduits at the Rocky Reach and Rock Island Projects located on the Columbia River in Chelan and Douglas Counties, Washington, and has prepared an Environmental Assessment (EA). The project occupies lands managed by the Bureau of Land Management and the U.S. Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendments and concludes that approval of the proposed amendments with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on March 14, 2002 for the above applications. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Vince Yearick at (202) 219–3073.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7308 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

March 21, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order

b. *Project No:* DI02–2–000

c. *Date Filed:* March 5, 2002

d. *Applicant:* Sheldon Jackson College

e. *Name of Project:* Indian River Project

f. *Location:* The project is located on the Indian River at Sitka Sound, in Sitka, Alaska, at T. 56 S., R. 63 E. This project will not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. § § 817 (b).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, telephone (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 219–2678, or e-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments and or motions:* April 22, 2002

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov*.

Please include the docket number (DI02–2–000) on any comments or motions filed.

k. *Description of Project:* The Indian River Project, a run-of-river development, owned and operated by Sheldon Jackson College, consists of: (1) a reservoir with a surface area of approximately 1 acre; (2) a 10-foot-high, 110-foot-long, low-head rock-filled dam; (3) a reinforced concrete intake structure; (4) a 1,000–foot-long, 42-inch-diameter steel diversion flume; (5) a screened diversion weir in an unlined canal which diverts water into a 900–foot-long, 42–inch-diameter buried wood-stave pipeline; (6) a powerhouse containing a 75–kilowatt generator; (7) a concrete tailrace discharging through two fish broodstock pens into Crescent Bay; and (8) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room,

located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7305 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–002; RP01–484–000; RP01–486–000; RP00–139–000]

El Paso Natural Gas Co.; Aera Energy, LLC, et al., Complainants v. El Paso Natural Gas Co., Respondent; Texas, New Mexico and Arizona Shippers, Complainants v. El Paso Natural Gas Co., Respondent; KN Marketing, L.P., Complainant v. El Paso Natural Gas Co., Respondent; Notice of Public Conference

March 21, 2002.

At the March 13, 2002 Commission meeting, the Commission directed that a public conference be held to take comments on Staff's recommended basis for assigning capacity and receipt points on the El Paso Natural Gas Company system (El Paso). A description of Staff's proposal is posted on the Commission's website at *http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm*

Take notice that on April 16, 2002 at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, the Commission Staff will hold a public conference to receive comments on Staff's capacity allocation proposal. The conference will consist of short presentations by panels of interested parties, including full requirements shippers, contract demand shippers, state interests, and El Paso. Persons interested in participating in the panels should indicate their interest by March 28, 2002 by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket RP00–336–002, *et al.* Each request to participate must include a contact person, telephone number and E-mail address. Comments addressing capacity allocation issues may also be filed on April 16, 2002.

Every effort will be made to accommodate requests to make presentations, but depending on the number of requests received, a limit may have to be placed on the number of participants or the time for presentations. To provide for a more productive conference, interested persons should coordinate their efforts and choose one spokesperson to make a statement on behalf of a group where interests coincide. Upon receipt of these requests, a subsequent notice of the conference presentation schedule will be issued.

The conference will be transcribed, so that those not attending can review the proceedings. Those interested in obtaining transcripts of the proceedings should contact Ace Federal Reporters at (202) 347–3700.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7310 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–1]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with DynCorp I&ET, Incorporated, to provide assistance in the enforcement of regulatory requirements under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, until September 30, 2004. DynCorp has been authorized to have access to information submitted to EPA under these statutes that may be claimed and determined to be confidential business information.

DATES: This notice is effective March 27, 2002.

ADDRESSES: Address all comments concerning this notice to Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: *gairola.sounjay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: gairola.sounjay@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has authorized DynCorp I&ET, Incorporated, (''DynCorp''), a contractor, to access information submitted to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. Some of this information may be claimed and determined to be confidential business information (''CBI''). The EPA contract number is 68–W–99–072. The DynCorp corporate address is: DynCorp I&ET, Incorporated

6101 Stevenson Avenue, Alexandria, VA 22304.

Under the contract, DynCorp provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance in a number of activities primarily related to the Clean Air Act. The contractor may also be called upon to provide support to other EPA offices under the other statutes. The activities in which DynCorp provides enforcement support include, but are not limited to: Analyzing evidence regarding changes or modifications made by utility power plants and the effect such changes may have on compliance with the Prevention of Significant Deterioration, New Source Review, New Source Performance Standards and other requirements of the Clean Air Act; and, Administrative support in managing documents concerning EPA investigations of utility power plants, such as photocopying and filing.

The type of information that may be disclosed includes, but is not limited to: Records related to the production of electricity, power plant construction records, Public Utility Commission records, Federal Energy Regulatory Commission records, and records of capital expenditures.

It is necessary for DynCorp to have access to these records in order to support EPA in determining whether regulated parties are in compliance with applicable regulatory requirements under the above listed statutes. DynCorp may be assisted in these activities by a subcontractor, Joyo Environmental Services of Alexandria, Virginia, working under DynCorp subcontract number K0–1–0074.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to DynCorp and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, that EPA may allow access to CBI contained in such submittals to DynCorp and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until September 30, 2004.

As required by 40 CFR 2.301(h)(2), the DynCorp contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors. Similar requirements are contained under 40 CFR 2.302(h), 40 CFR 2.305(h), and 40 CFR 2.306(j), for the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, respectively. The notice is intended to meet the requirements of these regulations as well.

In accordance with 40 CFR 2.301(h)(2)(iii), EPA is affording individuals affected by this Notice an opportunity to comment on the disclosure of confidential business information to its contractor DynCorp. Comments should be addressed to the information contact given above.

Dated: March 14, 2002.

Bruce C. Buckheit,

Director, Air Enforcement Division.

[FR Doc. 02–7330 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34253; FRL–6824–7]

Imazalil; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for imazalil. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket control number OPP–34253 for imazalil, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34253 for imazalil in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8038 ; e-mail address: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for imazalil, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34253. 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. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments 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.

2.*In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-docket@epa.gov or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for imazalil, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the imazalil RED will be made available for public comment at a future date.

EPA and United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as imazalil, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for imazalil. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The imazalil risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6944 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34254; FRL–6829–4]

Ziram; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the risk assessment and related documents for Ziram. This notice also starts a 60-day public comment period for the risk assessment. Comments are to be limited to issues directly associated with Ziram and raised by the risk assessment or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that the risk assessment for Ziram is preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34254, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 for Ziram in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; e-mail address: Dobak.Pat@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to fruit, vegetable, and nut producers; food processors; painters; worker protection advocates; environmental groups; and the chemical industry. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/. In addition, copies of the risk assessment and certain related documents may also be accessed at http: www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34254. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #1t2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34254. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility and tolerance reassessment decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's risk assessment and other related documents for Ziram are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for Ziram.

The Agency cautions that the Ziram risk assessment is preliminary and that further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessment for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. All comments should be submitted by May 28, 2002 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for Ziram.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–7099 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50895; FRL–6826–1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: *By mail*: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

053263–EUP–1. Amendment. Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232–1419. The EUP amendment for poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy for control of immature midges and mosquitoes was published in the **Federal Register** of October 31, 2001 (66 FR 54995) (FRL–6804–8). The original issuance allowed 1,700 pounds of the insecticide poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy to be used to treat and evaulate 67 acres of mosquitoes and midges habitats in the States of California, Florida, and South Carolina. This amendment will allow for additional use sites, bringing the count to 135 acres. The program is authorized only in the States of California, Florida, and South Carolina. This EUP is effective from October 31, 2001 to October 31, 2002. (Dani Daniel; Rm. 211, Crystal Mall #2; telephone number: (703) 305–5409; e-mail address: daniel.dani@epa.gov).

62719–EUP–45. Issuance. Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This EUP allows the use of 67,000 pounds of the ProFume Gas Fumigant (sulfuryl fluoride) on up to 141 structures/enclosures to evaluate the control of post harvest infestations of insect and rodent pests in walnut and raisin processing facilities, warehouses, storage bins and facilities, fumigation chambers, and permanent and temporary enclosures (tarped commodity fumigation). This EUP allows evaluation of sulfuryl fluoride as an alternative to methyl bromide in the post-harvest fumigation of stored commodities. The program is authorized only in the State of California. The EUP is effective from March 1, 2002 to March 1, 2005. Temporary tolerances were established and published in the **Federal Register** of February 7, 2002 (67 FR 5735) (FRL–6823–4) for residues of the active ingredient sulfuryl fluoride

and its metabolite fluoride in or on walnuts and raisins. (Dennis McNeilly; Rm. 213, Crystal Mall #2; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 18, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–7226 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0386.

Title: Section 74.1635, Special Temporary Authorizations (STA's).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions.

Number of Respondents: 1,550.

Estimated Time Per Response: 1–4 hours (avg.).

Total Annual Burden: 2,000 hours.

Annual Reporting and Recordkeeping Cost Burden: $919,955.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

OMB Control No.: 3060–1004.

Title: Orders Re: E911 Waivers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, state, local and tribal government.

Number of Respondents: 22.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 110 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Quarterly and semi-annual reporting requirements, recordkeeping requirement.

Needs and Uses: The quarterly and supplemental reports will be used by the Commission to monitor carrier progress in transition to E911, and thus ensure that this important effort will continue in an orderly and timely fashion. The Commission received emergency approval from the Office of Management and Budget (OMB) on February 14, 2002 (67 FR 09450, 3/1/02).

Comments submitted regarding these paperwork burdens will be reflected in the Commission's request for the three-year approval under the Paperwork Reduction Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7261 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeeting, Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Friday, March 22, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 22, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–7442 Filed 3–25–02; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Commission hereby gives notice that on March 21, 2002, the Westbound Transpacific Stabilization Agreement withdrew its proposed Reefer Trade Management Program, FMC Agreement No. 011325–027. The Commission, therefore, will not hold an oral hearing on the matter as noticed in the **Federal Register** on March 20, 2002, 67 FR 12993.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7368 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–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.: 010776–121.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A. P. Moller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P & O Nedlloyd B.V., P & O Nedlloyd Limited.

Synopsis: The proposed agreement modification extends the suspension of the conference for another six-month period, through November 1, 2002.

Agreement No.: 011708–002.

Title: Zim/COSCON Slot Charter Agreement.

Parties: Zim Israel Navigation Company Ltd., COSCO Container Lines Co. Ltd.

Synopsis: The proposed amendment adds the trade between the United States East Coast and North Europe to the scope of the agreement, extends the duration of the agreement, and makes address/contact information and other technical revisions.

Agreement No.: 011795.

Title: Puerto Rican Cross Space Charter and Sailing Agreement.

Parties: Compania Chilena de Navegacion Interoceanica S.A., Compania Sud Americana de Vapores S.A.

Synopsis: The proposed agreement authorizes the parties to cross charter container space in the trade between Puerto Rican ports, on the one hand, and ports on the Mediterranean, Black, and Caribbean Seas and ports on the West coast of South America, on the other hand. The parties request expedited review.

Dated: March 22, 2002.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7369 Filed 3–26–02; 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: 16587N.
Name: Fescargo Corporation.
Address: 1145 West Walnut Street, Compton, CA 90220.
Date Revoked: March 7, 2002.
Reason: Failed to maintain valid bond.

License Number: 12086N.
Name: Globe Cargo, Inc.
Address: 12621 Chadron Avenue, Suite B, Hawthorne, CA 90250.
Date Revoked: March 1, 2002.
Reason: Failed to maintain valid bond.

License Number: 16036N.
Name: House to House International Freight Forwarders, Inc.
Address: 2103 NW 79th Avenue, Miami, FL 33122.
Date Revoked: March 7, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3903F.
Name: Jagro California, Inc.
Address: c/o Jagro Customs Brokers and International Freight Forwarders, Inc., 290 Nye Avenue, Irvington, NJ 07111.
Date Revoked: February 13, 2002.
Reason: Surrendered license voluntarily.

License Number: 4304F.
Name: K.A.K. LLC dba Hoosier Forwarders.
Address: 1507 South Olive, South Bend, IN 46619.
Date Revoked: February 12, 2002.
Reason: Surrendered license voluntarily.

License Number: 10380N.
Name: Pana-York Maritima, Ltd.
Address: 411A N. Wood Avenue, Suite 5, Linden, NJ 07036.
Date Revoked: February 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3406N.
Name: Simmons International Express, Inc.
Address: 101 E. Clarendon Street, Prospect Heights, IL 60070.
Date Revoked: January 4, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15129N.
Name: Vanguard Moving & Storage Co., Inc. dba Guardship.
Address: 1901 Light Street, Baltimore, MD 21230.
Date Revoked: March 7, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7371 Filed 3–26–02; 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 part 515.

License No.	Name/Address	Date Reissued
4335F	International Services, Inc., 2907 Empress Court, Valrico, FL 33594	December 5, 2001.

License No.	Name/Address	Date Reissued
17007N	JHJ International Transportation Co., Ltd., Suite 2502, Shartex Plaza No. 88, Zun Yi Nan, Shanghai, 200336, China, and 765 Dillon Drive, Wood Dale, IL 60191 .	January 10, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7372 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Uniworld Express, Inc., 520 Carson Plaza Ct., Suite 211, Carson, CA 90746, Officer: James Hwang, President, (Qualifying Individual).

Jet-Speed Logistics (USA), LLC dba Jet-Speed Ocean Line, 1555 Mittel Boulevard, Suite M, Wood Dale, IL 60191, Officer: Mark K. Phillips, Owner, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

The Relocation Freight Corporation of America, 200 Summit Lake Drive, Valhalla, NY 10595, Officers: Michael Cazalet, Vice President, (Qualifying Individual), P. David Franzetta, President.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7370 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gertrude Myers 1988 Revocable Trust, and Marilyn Myers Bouziden, both of Alva, Oklahoma; as trustee, to acquire control of Myers Bancshares, Inc., Alva, Oklahoma, and thereby indirectly acquire voting shares of The Central National Bank of Alva, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7343 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo-und Vereinsbank AG, Munich, Germany; which is partially owned by Munchener Ruckversicherungs-Gesellschaft AG, Munich, Germany, which is partially owned by Allianz AG, Munich, Germany; to acquire Digital Signature Trust Company, Salt Lake City, Utah, and thereby indirectly engage through Identrus, LLC, New York, New York, in certification authority activities, and other incidental activities relating to the certification authority activities, pursuant to *Bayerische Hypo-und Vereinsbank AG*, 86 Fed. Res. Bull. 56 (2000).

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–7342 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, HHS.

ACTION: Notice of April 29–30, 2002 Meeting; Correction.

SUMMARY: The National Human Research Protections Advisory Committee published an announcement in the **Federal Register** on March 13, 2002, concerning the April 29–30, 2002 NHRPAC committee meeting. The announcement contained the incorrect location of the meeting.

FOR FURTHER INFORMATION CONTACT: Keisha Johnson, (301) 435–4917.

Correction

In the **Federal Register** of March 13, 2002, in FR Doc. 02–5925, on page 11343, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–1600.

Dated: March 21, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–7280 Filed 3–26–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDCAssistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Ovarian Cancer Patterns of Care Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Ovarian cancer is the second most common gynecologic cancer in the United States (U.S.), with 23,100 new cases and 14,000 deaths expected in 2001. Five-year relative survival is 95% for cases diagnosed at localized stage (25% of ovarian cancers), 79% for cases diagnosed with regional disease (9% of ovarian cancers), and 28% for those with distant disease at diagnosis (60% of ovarian cancers). Currently, screening tests that would detect ovarian cancer at an early stage and thus decrease mortality are not available.

Studies suggest that some ovarian cancer patients may not receive recommended treatment and staging. Limited information regarding recent, population-based estimates of the patterns of care for ovarian cancer treatment is available. While cancer registries generally collect information on treatment and stage of disease, detailed information is often not reported, and the accuracy of treatment and stage data collected is unknown.

The purpose of this project is to determine the type of treatment received by ovarian cancer patients, the medical specialty providing care, treatment outcome, staging procedures performed, and the accuracy of treatment and staging data in central cancer registries. A random sample of 1,500 cases per site diagnosed with first primary ovarian cancer is selected from three population-based central cancer registries (diagnosis years 1998–2000 in New York State and California, and 1997–2000 in Maryland). Because not all information may have been reported to the central cancer registries, this data will be collected from medical records of these cases for patient and tumor characteristics, treatment, and staging. Data collected will be sent to CDC investigators for analysis. The estimated annualized cost to respondents is $650,000.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	2250	1	15/60	563
Total	.....	.....	.....	563

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7276 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Survey of Dentists to Obtain Information that will Improve the Reporting of Oral and Pharyngeal Cancers—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Legislation in most States requires the collection of incidence and mortality data on all types of cancers to identify cancer control needs and to track progress in reducing cancer incidence and deaths. These data include the counting of cancer cases as well as basic medical information about these cases such as the stage of the tumors at time of diagnosis. The goal of this project is to help the States of West Virginia and South Carolina to improve the accuracy, completeness and timeliness of oral and pharyngeal cancer data in their Central Cancer Registries. Oral and pharyngeal cancer is the focus of this project because it is suspected that many cases of these cancers are currently undercounted and the quality of available data is in need of improvement. In addition, oral and pharyngeal cancers have very poor 5-year survival (less than 50%), yet most are preventable. Therefore, control of oral and pharyngeal cancer is an important public health goal of these State Health Departments. These improved data will better meet the State's own legal mandate of cancer surveillance as part of the State public health infrastructure, and assist in the planning and evaluation of oral and pharyngeal cancer control efforts.

While cancer registries routinely receive pathology reports of tumor diagnoses, it is possible that for some cases of oral and pharyngeal cancer, the pathology specimens are sent to special pathology labs associated with dental schools, or to out-of-state laboratories. To ascertain these under-utilized pathology reporting sources, a simple survey will be sent to dental health providers (mostly dentists and oral surgeons). All such providers will be surveyed in West Virginia, while a sample of providers will be surveyed in South Carolina. The survey will ask if oral cancer screening is performed in the practice, if suspicious lesions are biopsied in the practice, and if not, to which specialists are referrals made. If the practice performs biopsies of oral lesions, the name and address of the pathology laboratory will be requested. These laboratories will be informed of their responsibility to report newly diagnosed tumors to the State Central Cancer Registry. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Dentist and Oral Surgeons	1600	1	12/60	320
Total	.....	.....	.....	320

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7277 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–19–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Reactions to Canadian-style Cigarette Warning Labels—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), proposes to conduct a national survey of young persons to assess their attitudes towards larger and more graphic cigarette warning labels, such as those currently used in Canada. Although the

purpose of cigarette warning labels is to alert consumers about the health hazards of smoking, research suggests that current U.S. warnings fail to get the attention of smokers, an important first step if warnings are to have any deterrent effect. Cigarette warning labels have not changed since 1984 in the United States.

The proposed study will be conducted through implementation of a web-based survey. We propose to administer a 10 minute survey to 2000 persons 18 to 24 years of age. The survey will include images of Canadian cigarette packs with their current warning labels and questions about reactions to these warnings, including acceptability, and perceived usefulness (perceived impact on starting to smoke or deciding to quit). The results of this study will be shared with policy makers and public health officials. The total burden for this data collection is 200 hours.

Respondents	Number of respondents	Responses/respondent	Avg. burden per Response (in hrs)
Persons 18–24 years old	1200	1	10/60

Dated: March 19, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7275 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143; Correction

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention, published a document in the **Federal Register**, March 19, 2002, (67 FR 12570), concerning Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143. The meeting time has changed.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, M/S R–6, Cincinnati, Ohio 45226, telephone 513–841–4560.

Correction: In the **Federal Register** of March 19, 2002, (Volume 67, Number 53) [Notices] Page 12570, correct the ''Times and Dates'' to read:

Times and Dates:

2 p.m.–2:15 p.m., April 2, 2002 (Open)

2:20 p.m.–4 p.m., April 2, 2002 (Closed)

The meeting place, status, and purpose, announced in the original notice remain unchanged.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 21, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–7317 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 26, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control No. 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrates a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and

premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a premeeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014, expires September 30, 2002); 356h (OMB Control No. 0910–0338, expires March 31, 2003); and 3397 (OMB Control No. 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document. Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that a premeeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document. The hour burden estimates contained in table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

In the **Federal Register** of October 23, 2001 (66 FR 53612), FDA published a 60-day notice requesting public comment on the information collection provisions (the October 2001 notice). One letter of comment was received in response to the 60-day notice on the information collection.

The comment declared, without any explanation or supporting information, that the proposed collection of information was unnecessary. The comment also attempted to reserve judgment as to whether our estimated information collection burden was accurate. The comment seemed to object to fast track drug development programs and stated in part that ''for our Congress to even think about letting it happen is playing games with the existing laws.''

FDA disagrees with the comment. Section 506 of the act requires sponsors to submit sufficient clinical data for FDA to determine, after preliminary evaluation, whether a fast track product may be effective. To obtain that clinical data as described in the guidance document, FDA must have an approved collection of information. Failure to obtain OMB approval for the proposed collection of information would undermine the guidance document's value (because FDA might not receive information that would help the review or receive unnecessary or confusing information) and ultimately undermine the efficiency of the review under a fast track drug development program.

Additionally, the October 2001 notice provided sufficient information and opportunity for public comment on the information collection burden estimates given in the notice. The comment received did not provide any figures or explanations that would cause us to change our burden estimates, so FDA has no reason to revise the collection burden estimates.

As for the comment's remarks regarding fast track drug development programs and Congress, such matters are outside the scope of this notice. We do, however, regard the statute as providing sufficient safeguards to

prevent unsafe or ineffective drugs from reaching the public.

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation request	45	1.18	53	60	3,180
Premeeting packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7375 Filed 3–26–02; 8:45 am]

BILLING CODE 4160–01–S

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 Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: April 24–26, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(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: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7266 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of 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 a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 9, 2002.

Open: 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7269 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(60), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with

the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard D. Crosland, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Ninds/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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: National Institute of Neurological and Stroke Special Emphasis Panel.

Date: April 24, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7264 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 10, 2002.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7271 Filed 3–26–02; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 86.

Date: April 11, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

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: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 87.

Date: April 29, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

(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: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7272 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

Date: April 11–12, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tommy L. Broadwater, Chief, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building/MSC 6500, 45 Center Drive, Room 5AS–25U, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7273 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 2 p.m. to March 27, 2002, 3 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 1, 2002, from 4 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7265 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: March 28, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabhe L. Atreya, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

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: April 1, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@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: April 2, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Call).

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

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: April 2, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@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: April 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@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: April 5, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The River In, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

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: April 8, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

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: April 9–10, 2002.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2002.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265 *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 11, 2002.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

(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: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7267 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 4:30 p.m. to March 27, 2002, 5 p.m., NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 2, 2002, from 12 p.m. to 1 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7268 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: April 1, 2002.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@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: April 2–3, 2002.

Agenda: To review and evaluate grant applications.

Time: 8:30 a.m. to 4 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Clare K. Schmitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, *schmittc@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: April 2, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *poltisa@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: April 2, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

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: April 3, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

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: April 4, 2002.

Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@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: April 7–9, 2002.
Time: 4 p.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Argonne Guest House, Argonne National Laboratory, 9700 South Cass Avenue—Building 460, Argonne, IL 60439.
Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 10, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, Scientific Review Administrator, Center for Scientific Review, National Institues of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.
Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SEP.
Date: April 11, 2002.
Time: 10 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.
Contact Person: J. Terrell Hoffeld, DDS, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MS 7844, Bethesda, MD 20892, (301) 435–1018.

(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: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7270 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 21406, April 30, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the Office of Equal Opportunity, Office of the Director, NIH, as follows: (1) Retitle the Office of Equal Opportunity (NAD, formerly HNAD) as the Office of Equal Opportunity and Diversity Management and revise the functional statement; (2) retitle the Complaints Management and Adjudication Branch (NAD2, fomerly HNAD2) as the Division of Complaints Management and Resolution and revise the functional statement; (3) establish the Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5), and transfer into this division the functions of the Affirmative Employment and Programs Branch (NAD3, formerly HNAD3) and the Program Planning and Evaluation Branch (NAD4, formerly HNAD4); and (4) abolish the Affirmative Employment and Programs Branch (NAD3) and the Program Planning and Evaluation Branch (NAD4).

Section N–B, Organization and Functions, is amended by replacing the current section NAD (formerly HNAD) with the following:

Office of Equal Opportunity and Diversity Management (NAD, formerly HNAD). Serves as the focal point for NIH-wide policy formulation, implementation, coordination and management of the civil rights, equal opportunity, affirmative employment, and workforce diversity programs of the NIH. Specifically, NAD (1) advises the NIH director and staff, as well as Institute and Center (IC) staff, on matters related to the equal employment opportunity (EEO) programs and policies of the NIH; (2) provides leadership on policy development and implementation in all areas of EEO to include diversity management, affirmative action planning, and complaints management; (3) consults with and provides advice and guidance to responsible NIH officials regarding the progress of the EEO programs within their respective organizations; (4) oversees the implementation of Title VI of the Civil Rights Act as it relates to research contractors and grantees, and reports its progress to the NIH Director; (5) provides leadership in the overall management of the discrimination and complaints process for all NIH employees or applicants in all pay plans to ensure fair and judicious treatment of all parties involved; (6) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action plans and Workforce Diversity initiatives; (7) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (8) represents the NIH Director in contacts with groups, both within and outside NIH, and maintains liaison with other Federal agencies regarding EEO issues; (9) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Department of Justice, United States Commission on Civil Rights, DHHS Office of Civil Rights and the DHHS Office of the General Counsel regarding NIH EEO programs (10) prepares responses to Congressional, internal, external, and other inquiries on issues relating to NIH EEO programs and policies; (11) performs studies and analyses, as necessary, and provides related advice and guidance to NIH program managers in support of the EEO programs at NIH; and (12) conducts evaluations of EEO programs for NIH

components and ensures compliance with all applicable laws and regulations.

Division of Complaints Management and Resolution (NAD2, formerly HNAD2). Provides leadership in the overall management of the discrimination complaints process for all NIH employees or applicants in all pay plans. Specifically, NAD2 (1) manages and provides oversight for NIH complaints processing; (2) manages the formal complaints process for all NIH components, conducts investigations, reviews and analyzes investigative files, prepares proposed dispositions, (including addressing management problems identified in the investigations), presents recommendations for corrective action, identifies those complaints recommended for settlement, and prepares appropriate documents; (3) monitors and reviews the Commissioned Corps complaint management system to ensure proper processing of complaints; (4) monitors discrimination complaints at the NIH level to identify patterns of discrimination, as well as conducts data analysis on trends in filing and resolution of similar complaints; (5) prepares responses to Congressional or other requests and inquiries on EEO complaints; (6) provides leadership in policy development or changes to current NIH policies and procedures in the area of the discrimination complaints process and resolution; (7) represents the Director, Office of Equal Opportunity and Diversity Management (OEODM), at all internal and external meetings related to complaints processing and adjudication; and (8) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department and the DHHS Office of the General Counsel.

Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5). Provides leadership in the overall management of all areas related to diversity management and affirmative action as well as compliance with all EEO related requirements and evaluation of EEO and diversity programs throughout the NIH. Specifically, NAD5 (1) serves as consultant to senior NIH management officials as well as IC program officials in all areas of equal opportunity, civil rights, affirmative action, and diversity management; (2) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action Plans and Workplace Diversity initiatives; (3) identifies training and educational needs in the areas of affirmative employment and diversity management and assesses the effectiveness of training activities; (4) in collaboration with the OIR, OEO and OHRM, develops NIH-wide policies and initiatives to eliminate barriers to equal employment opportunity and the effective management of diversity, which includes all job categories and segments of the work force; (5) ensures that all laws, regulations, executive orders, procedure and policies governing equal opportunity, civil rights, affirmative action, and diversity management are promulgated throughout the NIH; (6) provides leadership to the ICs and coordinates recruitment, placement and retention programs and strategies for underrepresented groups by promoting EEO and diversity awareness for all members of the NIH workforce; (7) in conjunction with the Office of Human Resource Management (OHRM) and the ICs, conducts community outreach activities to increase minority representation in new hires and career opportunities; (8) examines organizational personnel policies and practices to identify and eliminate barriers to full participation of all EEO groups in NIH employment opportunities; (9) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (10) develops criteria and conducts EEO and diversity program evaluations for NIH components; (11) develops and utilizes statistical research methods for the collection and analysis of data on various aspects of EEO to include new or modified methods to analyze workforce profiles, manpower distributions, and overall EEO effectiveness, and prepares and issues statistical reports on these projects; (12) handles EEO data requests from external and internal organizations, OEODM assessments and reports required by higher level authorities, as well as responses to Congressional and other inquires on affirmative action and diversity management; and (13) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department, and the DHHS Office of the General Counsel regarding the NIH affirmative action and diversity management programs.

Delegations of authority statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: March 8, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7274 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for a Permit

SUMMARY: On February 12, 2002, Circo Hermanos Suarez, S.A., applied for a permit to re-export polar bears under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are publishing this notice due to the high level of interest expressed by the public and members of Congress.

DATES: We have been and continue to receive information from numerous sources related to the status and condition of the bears, and their possible re-export. Our determination regarding the issuance of this permit will be based on all substantive information available to us. However, we anticipate that the review and processing of this application will require at least 45–60 days. Therefore, we will not be able to make a determination on this application until April 26, 2002, and will consider any additional information received by this date.

ADDRESSES: As with all applications received, documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281. Please refer to the PRT number when requesting a copy of the documents.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Circo Hermanos Suarez, S.A., PRT–053440 requests a CITES certificate for the re-export of 5 male and 2 female polar bears (*Ursus maritimus*) from Puerto Rico to the Netherlands Antilles.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 26, 2002.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7315 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 26, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Thomas J. Moore, III, Ingram, TX, PRT–803337.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of three years. Permittee must apply for renewal annually.

Applicant: University of New Mexico/Depart. of Anthropology, Albuquerque, NM, PRT–013176.

The applicant requests renewal of a permit to authorize the import of biological samples from wild, captive-held, and captive-born chimpanzees (*Pan troglodytes*), pygmy chimpanzees (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) from various countries for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of five years.

Applicant: National Aviary, Pittsburgh, PA, PRT–053886.

The applicant requests a permit to export viable eggs of captive-bred Manchurian cranes (*Grus japonensis*) and white-naped cranes (*Grus vipio*) to the Khinganski Nature Reserve, Arkara, Russia for the purpose of enhancement of the survival of the species through captive breeding and re-introduction to the wild. As this request for a permit is part of an ongoing program, this application file will be established as a master file from which a permit will be issued for this year's export, and as the basis for which permits can be issued for similar activities to be conducted by the applicant over the next 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 15, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7316 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance; Endangered Species

On March 6, 2002, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–053151) to the Centers for Disease Control/National Center for Infectious Diseases, Atlanta, Georgia, to import biological samples collected post-mortem from one captive-born female Sumatran orangutan (*Pongo pygmaeus abelii*), and two male and one female captive-held/captive-born Bornean orangutan (*Pongo pygmaeus pygmaeus*) from the Singapore Zoological Gardens, Singapore. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the remaining Singapore Zoo population of 26 orangutans existed, and that no reasonable alternative was available to the applicant for several reasons.

The Centers for Disease Control (CDC) received a request from the Agricultural and Veterinary Authority of Singapore for assistance in determining the cause of death of two Bornean orangutans that died unexpectedly at the Singapore Zoological Gardens on January 20th and 21st, 2002. The request asked for assistance in determining whether the cause of death of these specimens was infectious in nature. The Singapore Authorities wanted to rule out two possible viral infections, Coxsackievirus B and encephalomyelitis virus (EMCV). They do not have the capability to conduct these same tests in Singapore. The Singapore Zoo also experienced two deaths of orangutans at their facility prior to the recent loss of these specimens. Tissue samples from all four specimens are being imported to determine whether the cause of death may be from the same disease vector.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: March 15, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–7314 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions, decisions, and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The twelfth regular meeting of the Conference of the Parties to CITES (COP12) will be held in Santiago, Chile, November 3–15, 2002.

With this notice we:

Announce a public meeting to discuss proposed amendments to the CITES Appendices (species proposals), resolutions, decisions, and agenda items that the United States is considering submitting for consideration at COP12; and

Provide information on how non-governmental organizations based in the United States can attend COP12 as observers.

DATES: The public meeting will be held on April 17, 2002, at 1:30 p.m. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12, and other items relating to COP12, if we receive them by May 17, 2002.

ADDRESSES:

Public Meeting

The public meeting will be held in Sidney Yates Auditorium, in the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT,** below).

Available Information

Information concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12 is available upon request from the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203. Effective April 1, 2002, this information will also be available from our World Wide Web site *(http://international.fws.gov/cites/cites.html)* and via our Faxback system. You may obtain the information via the Faxback system by dialing 703/358–2400, our Faxback telephone number, following the automated instructions, and entering Document Number 5054 when prompted to enter a document number.

Comment Submission

Comments pertaining to proposed resolutions, proposed decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: fw9 cites@fws.gov, or via fax at: 703/358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via e-mail at: fw9 scientific authority@fws.gov, or via fax at: 703/358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Division of Management Authority, Branch of CITES Operations, phone: 703/358–2095, fax: 703/358–2298, E-mail: fw9 cites@fws.gov; or Robert R. Gabel, Division of Scientific Authority, phone: 703/358–1708, fax: 703/358–2276, E-mail: fw9 scientific authority@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction if their trade is not controlled. These species are listed in Appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Web site at *http://international.fws.gov/cites/cites.html*, or from the official CITES Secretariat Website at *http://www.cites.org/eng/append/index.shtml*. Currently, 157 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the other Parties.

This is our third in a series of **Federal Register** notices that provide you with an opportunity to participate in the development of the United States' negotiating positions for the twelfth regular meeting of the Conference of the Parties to CITES (COP12). We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority at the above address. We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority at the above address. You may locate our regulations governing this public process in 50 CFR 23.31–23.39.

COP12 is scheduled to be held in Santiago, Chile, November 3–15, 2002.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, proposed resolutions, proposed decisions, and agenda items

that the United States is considering submitting for consideration at COP12. The public meeting will be held on April 17, 2002, from 1:30 p.m. to 4:30 p.m. in Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above). Sidney Yates Auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible. All persons planning to attend the meeting will be required to present photo identification when entering the building.

Observers

Article XI, paragraph 7 of CITES states the following:

''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.''

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP12 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP12 must receive prior approval from our Division of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP12 to participate in COP12 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP12. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past five years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP12 as an observer. These requests should be sent to the Division of Management Authority (*see* **ADDRESSES**, above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP12 will be added to our CITES Mailing List if it is not already included, and will receive notice of all future **Federal Register** notices and other information pertaining to COP12. A list of organizations approved for observer status at COP12 will be available upon request from the Division of Management Authority just prior to the start of COP12. The deadline for registration of an organization as an observer at COP12 is one month prior to the opening of the COP.

Future Actions

The United States must submit any species proposals, proposed resolutions, proposed decisions, and agenda items for consideration at COP12, to the CITES Secretariat 150 days prior to the start of the meeting (i.e., by June 6, 2002). We are planning to soon publish a **Federal Register** notice announcing species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting to COP12, and soliciting further information and comments on them. We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, proposed decisions, and agenda items warrant submission by the United States for consideration of the Parties. Those we decide to submit for consideration at COP12 will be submitted to the CITES Secretariat by June 6, 2002.

We expect the CITES Secretariat to provide us with a provisional agenda for COP12 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also plan to provide it through our Website, if it is available.

Approximately four months prior to COP12, we plan to announce those species proposals, proposed resolutions, proposed decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP12 by posting a notice on our Website, if it is available.

Through a **Federal Register** notice approximately two months prior to COP12, we will publish the provisional agenda for COP12 and inform you about proposed U.S. negotiating positions on proposals to amend the Appendices, draft resolutions, draft decisions, discussion papers, and other issues before the Parties for consideration at COP12. We will also publish an announcement of a public meeting that we expect to hold approximately 30 to 45 days prior to COP12, to receive public input on our positions regarding COP12 issues.

Prior to COP12, we plan to post on our Website (if it is available) any changes the United States makes to its proposed negotiating positions contained in the **Federal Register** notice referred to in the above paragraph.

Authority: The primary author of this notice is Mark Albert, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 12, 2002.

Steve Williams,

Director.

[FR Doc. 02–7313 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on February 5, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Subscriber Line Forum (''DSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, US Robotics, Schaumburg, IL, and Uniden America Corporation, Fort Worth, TX, have been added as parties to this venture. Also, Mitel Semiconductor is now called Mitel Networks, Ottawa, Ontario, Canada.

In addition, Globespan and Virata Ltd. have merged to become GlobespanVirata, cambridge, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on October 9, 2001. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7281 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nanometer Scale Patterning for Terabyte Capacity Disk Drives

Notice is hereby given that, on February 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Nanometer Scale Patterning for Terabyte Capacity Disk Drives has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; Imation Corporation, Oakdale, MN; and IBM Corporation, Almaden Research Center, San Jose, CA. The nature and objectives of the venture are to develop and demonstrate ''Nanometer Scale Patterning for Terabyte Capacity Disk Drives''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7286 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellinet Corporation, Richmond Heights, OH and Situs Management Inc., Tokyo, JAPAN have been added as parties to this venture. Also, the following are no longer members: 2nd Wave Inc., Dallas, TX; Access360, Irvine, CA; AdventNet Inc., Pleasanton, CA; Altaworks Corporation, Nashua, NH; Aptegrity Inc., Fairfield, NJ; Arsenal Digital Solutions, Durham, NC; Arula Systems Inc., Cupertino, CA; Avasta Inc., San Francisco, CA; AVCOM, Sunnyvale, CA; Candle Corporation, El Segundo, CA; Center 7 Inc., Lindon, UT; Check Point Software Technologies Ltd., Redwood City, CA; Crystal Group Inc., Hiawatha, IA; DefendNet Solutions Inc., Providence, RI; developNET Corporation, Portland, OR; Digital Fuel Technologies Inc., Redwood City, CA; Dimension Data McLean, VA; Dirig Software, Nashua, NH; e4e Inc., Santa Clara, CA; EasyVista.com, Beverly, MA; Entuity, New York, NY; Envive Corporation, Mountain View, CA; esavio, Berwyn PA; Euclid Network Solutins Inc., Santa Clara, CA; FusionStrorm, San Francisco, CA; Gomez Networks, Lincoln, MA; Guardent Inc., Waltham, MA; ISManaged Inc., Plano, TX; Keynote Systems Inc., San Mateo, CA; Kinetica Pty. Ltd., Pymble, New South Wales, AUSTRALIA; Logical Worldwide, Slough, UNITED KINGDOM; Luminate Inc., Redwood City, CA; ManagedStorage International Inc., Broomfield, CO; Marimba Inc., Mountain View, CA; N-able Technologies, Ottowa, Ontario, CANADA, NCMX Inc., Seattle, WA; NEXL Inc., Peabody MA; NOCpulse Inc., Sunnyvale, CA; Objective Systems Integrators, Folsom, CA; Oblicore Inc., Ramat Gan, ISRAEL; OMRON ALPHATEC Corporation, Tokyo, JAPAN; Opticom Inc., Andover, MA; PatchLink.com Corporation, Scottsdale, AZ; Precise Software Systems Ltd., Westwood, MA; Qualys Inc., Redwood City, CA; Raymond James & Associates, St. Petersburg, FL; Selis Networks Inc., San Francisco, CA; SilverBack Technologies, Billerica, MA; StorageWay Inc., Fremont, CA; Symantec Corporation, Cupertino, CA; TEKsystems Internet Business Services LLC, Beaverton, OR; and Trend Micro Inc., Cupertino, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on November 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2002 (67 FR 5292).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 02–7282 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Test Methods, Camberley, Surrey, UNITED KINGDOM; Datappli, Midland, MI; Data Patterns, West Mambalam, Chennai, INDIA; GTE–ERS, Ontario, CA; SBS Greenspring Computers, Newark, CA; Shaanxi Hitech, Xi'an, PEOPLE'S REPUBLIC OF CHINA; and Vero/APW Electronics, Southhampton, Hampshire, UNITED KINGDOM have been dropped as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department of August 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49042).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7283 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ines GmbH, Leibnizstrasse, Bad Breisig, Germany has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 11, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7284 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on February 26, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nissan Chemical Industries, Ltd., Tokyo, Japan has been added as a party to this venture. Also, Micro-Flo Company, Memphis, TN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on January 28, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7285 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Notice of Registration

By Notice dated September 24, 2001, and published in the **Federal Register** on October 3, 2001 (66 FR 50454), Roche Diagnostics Corporation, ATTN: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of alphamethadol (9605) a basic class of controlled substance listed in Schedule I.

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substance for incorporation in drug of abuse detection kits.

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 Roche Diagnostics Corporation, is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation 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 class of controlled substance listed above is granted.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–7259 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52782), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

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 Stepan Company, Natural Products Department to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company, Natural Products Department on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation 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 section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistance Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 02–7260 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–04–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 7 Agreement State reports submitted annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of responses:* 87 (3 NRC licensee + 7 Agreement State licensee responses + 77 recordkeepers).

7. *The estimated number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 26, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7324 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Decommissioning Criteria for the West Valley Demonstration Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting in West Valley, New York.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a transcribed, facilitated meeting on April 17, 2002 with the public to discuss the Commission's policy statement on the clean up criteria for the West Valley site entitled, ''Decommissioning Criteria for the West Valley Demonstration Project at the West Valley Site.'' The meeting will also include a discussion of the perspectives, roles, and responsibilities of the NRC and other federal and state agencies involved at the West Valley site. The Department of Energy and New York State Energy Research and Development Authority will also participate.

DATE/TIME: The meeting will be held on Wednesday, April 17, 2002, from 7 p.m. through 10 p.m. The meeting will be preceded by an ''open house'' between 6 p.m. and 7 p.m to allow for individual discussions with staff members.

LOCATION: Ashford Office Complex, 9030 Route 219, West Valley, New York.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.* Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site, *http://www.access.gpo.gov/su_docs/fedreg/frcont02.html*, or by contacting Mr. Chad Glenn at (800) 368–5642, ext. 6722, or via e-mail at *cjg1@nrc.gov.* The policy statement was published in the **Federal Register** on February 1, 2002 (67 FR 5003). Those who wish to ask questions should register with Mr. Glenn prior to the meeting or at the Ashford Office Complex, 9030 Route 219, West Valley, New York meeting site 15 minutes prior to the start of the meeting. Individual oral questions may be limited by the time available, depending on the number of persons who register. Copies of the information on the policy statement will also be available at the meeting. All attendees are requested to bring photo identification (*i.e.*, driver's license).

Dated at Rockville, Maryland this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–7323 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on an Overview of Recent Activities Related to the Potential High-Level Waste Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Beatty, Tonopah, and Ely, Nevada.

SUMMARY: This is being reprinted to clarify dates, times and locations. The U.S. Nuclear Regulatory Commission (NRC) staff will hold three public meetings on regulation of a potential high-level waste repository at Yucca Mountain. The meetings are intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meetings are primarily to acquaint the public with the NRC oversight of a potential high-level waste repository at Yucca Mountain. It will begin with an overview of NRC's responsibilities, include a discussion of NRC's regulations and preparations for evaluating a potential U.S. Department of Energy (DOE) license application, and conclude with an overview of the NRC's role with respect to the transportation of high-level waste. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for informal discussion with members of the public. The dates, times, and locations of the public meetings are shown below.

Date/Time: Monday, April 8, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Beatty Senior Center, 150 A Avenue South, Beatty, Nevada.

Date/Time: Tuesday, April 9, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Tonopah Convention Center, 301 West Brougher Avenue, Tonopah, Nevada.

Date/Time: Wednesday, April 10, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Holiday Inn Prospector Inn & Casino, 1501 E. Aultman Street, Ely, Nevada.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.*

Dated at Rockville, MD this 22nd day of March, 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7322 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25468; 812–12446]

UTEK Corporation; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, UTEK Corporation (''UTEK''), requests an order approving its Non-Statutory Stock Option Plan (the ''2000 Plan'') and the grant of certain stock options under the 2000 Plan.

FILING DATES: The application was filed on February 13, 2001, and amended on January 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 202 South Wheeler Street, Plant City, FL 33566.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation and an internally managed business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] UTEK's primary investment objective is to increase its net assets by exchanging stock in its portfolio companies for cash and other assets it will use to acquire additional technologies. UTEK seeks to achieve that investment objective by developing portfolio companies that identify, license and market new technologies invented primarily by employees of universities and laboratories. UTEK expects that the primary source of technology opportunities will be, as it has been in the past, presented to it as a result of contacts with universities research laboratories and in private industry, provided by its management, including its Non-Officer Directors as defined below.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the 2000 Plan for directors who are not employees or officers of the applicant (''Non-Officer Directors'').[2] Applicant has a seven-member board of directors (the ''Board''), five of whom are not interested persons of the applicant (''Disinterested Directors'').[3] On February 8, 2000, applicant's Board approved the 2000 Plan, and applicant's shareholders approved the 2000 Plan on October 2, 2000. The 2000 Plan will become effective on the date that the Commission issues an order on the application (the ''Order Date'').

3. The 2000 Plan provides for the grant of stock options to purchase shares of applicant's common stock (''Options'') to each of the Non-Officer Directors on the Order Date. The Non-Officer Directors will receive Options pursuant to the following formula: Options representing 25,000 Shares will be granted to four of the five Non-Officer Directors on the Order Date, with 6,250 Options for each grantee vested at the time of grant, and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years. One Non-Officer Director will be granted 50,000 Options, with 12,500 Options vested at the time of grant and an additional 12,500 Options vesting on each anniversary of the grant for three consecutive years. Any Non-Officer Director that is elected or appointed to the Board after the Order Date will receive Options representing 25,000 shares upon his or her election or appointment, with 6,250 Options vested at the time of grant and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years.

4. Under the 2000 Plan, the exercise price for Options will not be less than 100% of the current market value of the shares on the date of grant. Options granted under the 2000 Plan are exercisable for a period of 10 years from the date of grant or a shorter period as the Board may establish. In the event of death or permanent and total disability of an Non-Officer Director during the Director's service, unexercised Options will become exercisable only during the period of twelve months following the date of death or disability. In the event of the termination of a Non-Officer Director's directorship for a reason other than by death or permanent and total disability, an Option shall be held at the date of termination and may be exercisable in whole or in part for three months, or some lesser period not to be less than 30 days, as is provided for in the Option agreement. The Options will not be transferable except for disposition by gift, will, intestacy, or pursuant to a qualified domestic relations order (''QDRO'') as defined by section 414(p) of the Internal Revenue Code of 1986, as amended.[4]

5. Applicant states that, in addition to the 2000 Plan, UTEK also has in place another stock option plan, which was adopted by UTEK's stockholders in 1999 (the ''1999 Plan''). The 1999 Plan provides for the issuance of up to 500,000 options to purchase applicant's common stock. Non-Officer Directors are not eligible to receive options under the 1999 Plan. Applicant states that there is also an outstanding warrant to purchase up to 100,000 shares of UTEK's common stock held by Schneider Securities Inc., a registered broker-dealer. UTEK's outstanding options and warrant represent 471,600 shares or approximately 12% of its outstanding common stock as of September 30, 2001. UTEK does not have any other options, warrants or rights outstanding.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Non-Officer Directors currently receive no compensation for their services on the board of directors or committees, except for the reimbursement of out-of pocket expenses incurred in attending meetings.

[3] The Non-Officer Directors are Disinterested Directors.

[4] A QDRO is made pursuant to a court order or decree under state domestic relations laws (*e.g.*, involving divorce, child support, alimony, or marital property rights). Under section 414(p) of the Code, a QDRO permits a state domestic relations court to issue orders that will allow for employee plan benefits to be paid to an alternate payee.

result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the 2000 Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states that Non-Officer Directors not only provide UTEK with skills and experience necessary for management and oversight of UTEK's investments and operations and are likely to have specific experience with respect to technologies in which UTEK invests, but they are also considered an important source of technology investment opportunities. Applicant also states that Non-Officer Directors with industry or other relevant experience also are expected to participate on an ongoing basis in the analysis of prospective portfolio companies, as well as to provide managerial assistance to UTEK's portfolio companies and aid them in their business of researching, identifying, developing and licensing new technology. Applicant believes that its ability to make Option grants under the 2000 Plan to Non-Officer Directors provides a means of retaining the services of its current Non-Officer Directors and of attracting qualified persons to serve as Non-Officer Directors in the future. The Options also will provide a means for UTEK's Non-Officer Directors to increase their ownership interest in UTEK, thereby helping to ensure a close identification of their interests with those of UTEK and its shareholders. Applicant submits that the terms of the 2000 Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders and that the grant of Options to Non-Officer Directors will not have a substantial dilutive effect on the net asset value of UTEK's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7290 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25492; 812–12644]

Nationwide Life Insurance Company, et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts both within and outside the same group of investment companies.

Applicants: Nationwide Life Insurance Company (''NLIC''), Gartmore Mutual Funds (''GMF''), Gartmore Variable Insurance Trust (''GVIT''), Gartmore Mutual Fund Capital Trust (''GMFCT''), Gartmore Global Asset Management Trust (''GGAMT'') and Gartmore Morley Capital Management (''GMCM'' and, together with GMFCT and GGAMT, the ''Advisers'').

Filing Dates: The application was filed on September 12, 2001 and amended on March 21, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, One Nationwide Plaza, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. GMF is an Ohio business trust registered under the Act as an open-end management investment company. GVIT is a Massachusetts business trust registered under the Act as an open-end management investment company. The Gartmore Investment Companies (as defined below) are comprised of separate series, each of which represents a separate portfolio of securities with its own investment objectives and policies. The term ''Gartmore Investment Companies'' refers to GMF and GVIT and any current or future registered open-end management investment companies that are part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G) of the Act) as GMF and GVIT.

2. NLIC is a stock life insurance company organized under the laws of the state of Ohio and a wholly owned subsidiary of Nationwide Financial Services, Inc. (''NFS''), a provider of diversified financial services.[1] NLIC issues variable insurance contracts, which offer opportunities to invest in the Gartmore Investment Companies through separate accounts registered under the Act (''Registered Separate Accounts'') and separate accounts exempt from registration under the Act (''Unregistered Separate Accounts'' and, together with the Registered Separate Accounts, the ''Separate Accounts''). The Gartmore Investment Companies, including the Funds of Funds (as defined below), serve, although not exclusively, as funding mediums for the Separate Accounts and may serve, in the future, as funding mediums for Separate Accounts sponsored by insurance companies other than NLIC.

3. Applicants request relief to permit certain series of GMF and GVIT that are advised by an Adviser (the ''Funds of Funds'') to invest (a) in other series of the Gartmore Investment Companies (''Affiliated Underlying Funds'') and (b) in other registered open-end management investment companies and unit investment trusts that are not part of the ''same group of investment companies'' as the Gartmore Investment

[1] For purposes of the requested relief, NLIC includes any entity controlling, controlled by, or under common control with NLIC.

Companies (''Unaffiliated Underlying Funds'' and, together with the Affiliated Underlying Funds, the ''Underlying Funds'').[2]

4. Each Fund of Funds may make investments in government securities, short-term fixed income securities and other securities that are not issued by registered investment companies and which are consistent with its investment objectives and in a fixed rate investment contract issued by NLIC (''Nationwide Contract''). Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program with just one investment and will provide a simple, convenient and cost-efficient program for investors who are able to identify their investment goals and risk tolerances but may not be comfortable deciding how to invest their assets to achieve those goals.

5. GMFCT, GGAMT, and GMCM are registered as investment advisers under the Investment Advisers Act of 1940. GMFCT serves as investment adviser to the Funds of Funds and certain other series of the Gartmore Investment Companies, including the GMF Index Funds. GMFCT is an indirect subsidiary of NFS. GGAMT serves as investment adviser to certain series of the Gartmore Investment Companies. GMCM serves as investment adviser to two series of GMF.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit Underlying Funds to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the control that a Fund of Funds may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting the Advisers, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. To limit further the potential for undue influence by a Fund of Funds or its affiliates over an Unaffiliated Underlying Fund, applicants state that a Fund of Funds and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') will not cause any investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser, sponsor, promoter, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate''). The board of trustees of the Fund of Funds (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), also will adopt procedures designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions. The board of each Unaffiliated Underlying Fund that is organized as an open-end management investment company (''Unaffiliated Fund''), including a majority of the Disinterested Trustees, also will determine that, among other things, any consideration paid by the Unaffiliated Fund to the Fund of Funds or a Fund of Funds Affiliate is fair and reasonable and does not involve overreaching on the part of any person concerned.

6. To avoid the possibility that a Fund of Funds or a Fund of Funds Affiliate could force an Unaffiliated Underlying Fund to purchase certain securities, applicants state that a Fund of Funds will not cause an Unaffiliated Underlying Fund to purchase a security from an underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each, an ''Underwriting Affiliate''). For the purpose of the requested relief, an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

7. Applicants further state that the board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures designed to monitor any purchases of securities by the Unaffiliated Fund in Affiliated Underwritings, including any purchases made directly from each Underwriting Affiliate, and will make certain findings to assess whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. An Unaffiliated Fund will keep certain records concerning these purchases.

8. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Unaffiliated Fund will execute an agreement (prior to an investment in the shares of the Unaffiliated Fund in excess of the limits of section 12(d)(1)(A)(i) of the Act) stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Underlying Fund may choose to reject an investment from a Fund of Funds.

[2] For purposes of the requested relief, Adviser includes any entity controlling, controlled by, or under common control with an Adviser.

9. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD''), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD. Applicants represent that, with respect to an investment by a Registered Separate Account in a Fund of Funds, the aggregate of all fees and charges at all levels will be reasonable in relation to the services rendered, the expenses expected to be incurred and the risks assumed by the applicable parties.

10. In addition, applicants note that the Board of a Fund of Funds, including a majority of the Disinterested Trustees, would be required to determine that the advisory or management fees charged to the Fund of Funds are based on services provided that are in addition to, rather than duplicative of, services provided to Underlying Funds in which a Fund of Funds invest. Furthermore, an Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by a Fund of Funds in the Unaffiliated Underlying Fund.

11. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order. Applicants also represent that a Fund of Fund's prospectus and sales literature will contain clear, concise ''plain English'' disclosure designed to inform investors of the unique characteristics of the Fund of Funds' structure, including but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company or an affiliated person of such person. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among others: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Underlying Funds may be deemed to be under common control by virtue of having the same Adviser. Additionally, applicants state that a Fund of Funds and an Unaffiliated Underlying Fund may become affiliated persons if a Fund of Funds acquires more than 5% of the Unaffiliated Underlying Fund's outstanding voting securities. Applicants also state that GMFCT may be deemed an affiliated person of NLIC, the issuer of the Nationwide Contract, as they are both under the common control of NFS. The Funds of Funds, through their affiliation with NFS, may therefore be deemed affiliated persons of NLIC. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds and purchasing the Nationwide Contract from NLIC.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the investment by a Fund of Funds in shares of the Underlying Funds and the Nationwide Contract and the issuance of shares of the Underlying Funds to a Fund of Funds will be effected in accordance with the investment policies contained in the registration statement of such Fund of Funds. In addition, the Fund of Funds will pay no sales load when purchasing the Nationwide Contract, and the guaranteed rate on the Nationwide Contract will be at least as favorable as the guaranteed rate on all other similar fixed contracts issued by NLIC. Furthermore, each Fund of Funds will be permitted to remove its assets from the Nationwide Contract at any time without the imposition of a sales charge or market value adjustment.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisers, (b) any person controlling, controlled by, or under common control with the Advisers, and (c) any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Advisers or any person controlling, controlled by, or under common control with an Adviser (the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group (except for any member of the Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the

same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. A Fund of Funds and a Fund of Funds Affiliate will not cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of 12(d)(1)(A)(i) of the Act, the board of each such Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Fund of Funds or Fund of Funds Affiliate will cause an Unaffiliated Underlying Fund to purchase a security from an Underwriting Affiliate.

6. The board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The board of the Unaffiliated Fund should consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interest of shareholders.

7. The Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that the Unaffiliated Fund understand the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, must find that the advisory or management fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, the services provided to Underlying Funds in which the Fund of Funds will invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

10. An Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD.

12. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the act, except to the extent that such Underlying Fund (i) receives securities of another investment company as a dividend or as a result of a plan of

reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one more affiliated investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7325 Filed 3–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25493; 812–12650]

First American Investment Funds, Inc., et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility. The requested order would also amend a condition of a prior order (''Order'').[1]

Applicants: First American Investment Funds, Inc. (''FAIF''), First American Funds, Inc. (''FAF''), First American Strategy Funds, Inc. (''FASF''), First American Insurance Portfolios, Inc. (collectively, the ''Investment Companies''), U.S. Bancorp Asset Management, Inc. (''USBAM'') and all other open-end registered management investment companies and their series that now or in the future are advised by USBAM or a person controlling, controlled by, or under common control with USBAM (together with the Investment Companies, the ''Funds'').[2]

Filing Dates: On September 28, 2001 and amended on March 19, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James D. Alt, Esq., 601 Second Avenue South, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Investment Company is registered under the Act as an open-end management investment company and is organized as a Maryland or a Minnesota corporation. USBAM is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. The Funds have obtained an order permitting each Fund to use its uninvested cash to purchase shares of one or more affiliated money market funds that comply with rule 2a–7 of the Act (the ''Money Market Funds.'').[3] The Funds have also obtained an order permitting the Funds to invest cash on a joint basis through joint accounts (''Joint Accounts'').[4]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or by investing in other short-term instruments either directly or through Joint Accounts. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a fund has been delayed. Currently, the Funds have credit arrangements with their custodian (*i.e.,* overdraft protection).

4. If the Funds were to borrow money from their custodian under their current arrangements or from another bank, the Funds would pay a significantly higher interest rate than the rate that would be earned by other Funds on repurchase agreements and other short-term instruments. Applicants state that this differential represents the bank's profit for serving as middleman between a borrower and a lender.

5. Applicants request an order that would permit the Funds to enter into lending agreements under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Proposed Credit Facility''). Applicants believe that the Proposed Credit Facility would substantially reduce the Funds' potential borrowing costs and enable the Funds to earn higher rates of interest on cash balances they currently invest in Money Market Funds or repurchase agreements. Although the Proposed Credit Facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish a committed line of credit or other borrowing arrangements with banks. The Funds would also continue to maintain overdraft protection with their custodian.

6. Applicants anticipate that the Proposed Credit Facility would enable the Funds to borrow for temporary purposes at a substantially reduced cost in the event of unexpected cash needs due to ''failed'' sales of securities or an unanticipated volume of redemption requests or for other reasons. Sales fails

[1] *First American Strategy Funds, Inc.,* Investment Company Act Rel. Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order), *amendment by First American Funds, Inc.,* Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order).

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the order in the future will do so in accordance with representations and conditions of application.

[3] *First American Funds, Inc.,* Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order) (''Cash Sweep Order'').

[4] *First American Investment Funds, Inc.,* Investment Company Act Rel. Nos. 22537 (March 3, 1997) (notice) and 22589 (March 28, 1997) (order).

may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from the securities sold. In the event the Funds are unable to liquidate portfolio securities for immediate settlement to meet redemption requests, which normally are effected immediately, they will not receive payment in settlement for up to three days. The Proposed Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. While borrowing arrangements with banks will continue to be available to cover unexpected cash needs, under the Proposed Credit Facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans and for overdraft protection with its custodian bank. In addition, Funds lending through the Proposed Credit Facility would earn interest at a rate higher than they otherwise could obtain from investing their cash balances in repurchase agreements or the Money Market Funds. Thus, applicants believe that the Proposed Credit Facility will benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any loan made pursuant to the Proposed Credit Facility (the ''Interfund Loan Rate'') will be the average of the current overnight repurchase agreement rate available either directly or through the Joint Accounts (the ''Repo Rate'') and a single benchmark rate set for all Funds (the ''Bank Loan Rate''). The Bank Loan Rate will be calculated by USBAM each day according to a formula established by each Fund's board of directors (''Board'') to approximate the lowest interest rate at which bank loans would be available to the Funds. The formula will be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and will vary with this rate so as to reflect changing bank loan rates. The initial Bank Loan Rate formula and any subsequent modifications to the formula will be subject to the approval of each Fund's Board. Each Fund's Board periodically will review the continuing appropriateness of reliance on the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates.

9. The Proposed Credit Facility will be administered by the Cash Sweep and Interfund Borrowing Committee of USBAM (the ''Committee'') and is composed of USBAM's chief executive officer, chief investment officer, chief operating officer, corporate counsel and head of compliance operations. The Proposed Credit Facility will be available to Funds as lenders if the Fund would otherwise invest on any given day in the Money Market Funds pursuant to the Cash Sweep Order, or, in the case of Money Market Funds, if that Fund would otherwise invest in overnight repurchase agreements or other high quality short-term investments. Under the Proposed Credit Facility, the portfolio managers for each participating Fund, other than the Money Market Funds, may provide the Committee with instructions to participate as a borrower or lender. On each business day, the Committee will collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the Money Market Funds, from the Funds' custodian. With respect to the Money Market Funds, the portfolio managers will inform the Committee of the amount of cash, if any, they wish to make available under the Proposed Credit Facility as a lender. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Committee will allocate loans among borrowing Funds. Applicants expect that there typically would be far more available uninvested cash for borrowing than borrowing demand. After the Committee has allocated cash for interfund loans, it will inform the Money Market Fund managers of the amount of loans, if any, made for the account of each Money Market Fund, so that the Fund managers may invest any remaining cash in other available short-term instruments. With respect to other participating Funds, the Committee will follow standing instructions from the portfolio managers to invest the remaining amounts daily in the Money Market Funds pursuant to the Cash Sweep Order.

10. The Committee will allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally will be allocated to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures will be established by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. USBAM will (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and restrictions, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Boards of the Funds concerning any transactions by the Funds under the Proposed Credit Facility and the interest rates charged. USBAM will administer the Proposed Credit Facility as part of its duties under its existing management agreement with each Fund and would receive no additional fee as compensation for its services.

12. Each Fund's participation in the Proposed Credit Facility will be governed by and be consistent with its organizational documents and fundamental investment restrictions. Each Fund currently has a non-fundamental investment restriction limiting borrowings to 10% of total assets and barring the Funds from borrowing for leverage purposes. In the event a Fund does not have an investment restriction that prohibits the Fund from borrowing for other than temporary or emergency purposes, that Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days. No Fund will be permitted to participate in the Proposed Credit Facility unless the Fund has fully disclosed all material information concerning the Proposed Credit Facility in its statement of additional information.

13. Applicants state that certain Funds operate in reliance on the Order. Applicants state that condition 2 of the Order provides that Underlying Portfolios, as defined in the Order, will not acquire securities of other investment companies in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants request that condition 2 of the Order be amended solely to the extent necessary to permit the Underlying Portfolios to engage in interfund borrowing and lending transactions through the Proposed Credit Facility.

14. Applicants seek an order pursuant to section 6(c) of the Act exempting them from sections 18(f) and 21(b) of the Act, pursuant to section 12(d)(1)(J) of

the Act exempting them from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1) and 17(a)(3) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements. Applicants also seek an exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act solely to the extent necessary to amend the Order.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having USBAM as their common investment adviser and having the same Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Proposed Credit Facility transactions do not raise these concerns because (a) USBAM will administer the program as a disinterested fiduciary, (b) all interfund loans will consist only of uninvested cash balances the lending Fund would have invested in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund, (c) the interfund loans will not involve a greater risk than other similar investments, (d) the lending Funds will receive interest at a rate higher than it could otherwise receive for similar short-term investments, and (e) the borrowing Funds will pay interest at a rate lower than otherwise available to them under bank loan agreements. Moreover, applicants believe that the other conditions in the application will effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund. For the same reasons, applicants believe that the proposed amendment of the Order satisfies the standards of section 17(b) of the Act.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b), and from 17(a) to amend the Order, and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the Proposed Credit Facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that USBAM would receive no additional compensation for its services in administering the Proposed Credit Facility. Applicants also note that the purpose of the Proposed Credit Facility is to provide economic benefits for all the participating Funds. Applicants further state that for all of the above reasons, the requested amendment of the Order does not implicate any of the concerns behind section 12(d)(1) of the Act.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Proposed Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Proposed Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates, unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the Proposed Credit Facility is consistent with the provisions, policies

and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and restrictions. Applicants believe that each Fund's participation in the Proposed Credit Facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rate to be charged to the Funds under the Proposed Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for interfund loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than both the Repo Rate and the then-current yield on the highest-yielding Money Market Fund in which the lending Fund could invest under the Cash Sweep Order, and its investment policies and restrictions, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any interfund loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan of the Fund, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the interfund loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Proposed Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Proposed Credit Facility only on a secured basis. A Fund may not borrow through the Proposed Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No Fund may lend to another Fund through the Proposed Credit Facility if the loan would cause its aggregate outstanding loans through the Proposed Credit Facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each interfund loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

10. A Fund's participation in the Proposed Credit Facility must be consistent with its investment policies and limitations and its organizational documents.

11. Except as set forth in this condition, no Fund may borrow through the Proposed Credit Facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

12. The Committee will calculate total Fund borrowing and lending demand through the Proposed Credit Facility, and allocate interfund loans on an equitable basis among the Funds. The Committee will not solicit cash for the Proposed Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Committee will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds.

13. USBAM will monitor the interest rates charged and the other terms and conditions of the interfund loans and will make a quarterly report to the Boards of the Funds concerning the participation of the Funds in the Proposed Credit Facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the Proposed Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions, (b) will establish the Bank Loan Rate formula used to

determine the interest rate on interfund loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Proposed Credit Facility.

15. In the event an interfund loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, USBAM will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning the interfund loans.[5] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on all Funds involved. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Proposed Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on the Money Market Funds and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. USBAM will prepare and submit to the Funds' Boards for review an initial report describing the operations of the Proposed Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the Proposed Credit Facility, USBAM will report on the operations of the Proposed Credit Facility at the Boards' quarterly meetings. In addition, for two years following the commencement of the Proposed Credit Facility, the independent public accountant for each Fund shall prepare an annual report that evaluates USBAM's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield on the highest yielding Money Market Fund in which a lending Fund is permitted to invest, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any interfund loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the interfund loan.

After the final report is filed, the Funds' external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Proposed Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Proposed Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 2 to the Order will be modified as follows:

No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that an Underlying Portfolio has obtained exemptive relief from the Commission permitting it to (i) purchase securities of an affiliated money market fund for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7326 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] If the dispute involves Funds with separate Boards, the directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25490; File No. 812–12714]

Integrity Life Insurance Company, et al.; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission (''SEC or ''Commission'')

ACTION: Notice of application for an order pursuant to pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act''), approving substitution of shares of one registered management investment company with shares of another registered management investment company.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio (the ''Substitution'').

APPLICANTS: Integrity Life Insurance Company (''Integrity''), Separate Account II of Integrity Life Insurance Company (''Integrity Separate Account''), National Integrity Life Insurance Company (''National Integrity''), Separate Account II of National Integrity Life Insurance Company (''National Integrity Separate Account'') and Touchstone Advisors, Inc. (''Touchstone'') (collectively, the ''Applicants'').

FILING DATE: The application was filed on December 7, 2001 and amended and restated on March 18, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna

MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. The Integrity Separate Account was established under Ohio law in 1992. The Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One Integrity variable annuity contract (the ''Integrity Contract'') is affected by this application.

2. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

3. The National Integrity Separate Account was established under New York law in 1992. The National Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One National Integrity variable annuity contract (the ''National Integrity Contract'') is affected by this application (collectively, Integrity Contracts and National Integrity Contracts referred to as the ''Contracts'').

4. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Integrity and National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity and National Integrity. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

5. Touchstone, a subsidiary of Western and Southern Life Insurance Company, is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 2001, Touchstone had $1.6 billion in assets under management.

6. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. At the time of filing this application, the Integrity Contract offered 50 portfolios and the National Integrity Contract offered 31 portfolios. Both Contracts offer the Morgan Stanley High Yield Portfolio of the Universal Institutional Funds, Inc. (the ''Universal Funds'').

7. Both Contracts permit transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges. No sales charge applies to such a transfer of accumulation value among Subaccounts. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve in a contract year. Transfers must be at least $250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of types of automatic scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

8. Each of the Contracts reserves the right, upon notice to contractowners, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount. The reserved right is disclosed in each Contract's prospectus.

9. The Morgan Stanley High Yield Portfolio, a separate series of the Universal Funds, is currently an investment option under the Contracts. The Universal Funds is an open-end management investment company registered under the Act. The Morgan Stanley High Yield Portfolio is managed by Morgan Stanley Asset Management, Inc. (''MSAM'').

10. The investment objective of the Morgan Stanley High Yield Portfolio is to seek above-average total return over a market cycle of three to five years by investing primarily in high yield securities (commonly referred to as ''junk bonds''). The total annual expenses of the Morgan Stanley High Yield Portfolio for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.26% in management fees and .54% in other expenses). Absent voluntary reimbursements by MSAM, those expenses would have been 1.04% (.50% in management fees and .54% in other expenses). As of December 31, 2001, the Morgan Stanley High Yield Portfolio had $52.9 million in assets. As of December 31, 2001, the average annual total returns of the Morgan Stanley High Yield Portfolio, whose inception date is August 31, 1992, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.87%	−4.33%	−1.50%	n/a	4.13%

11. The Touchstone High Yield Fund is a separate series of the Touchstone Variable Series Trust, an open-end management investment company registered under the Act. It is currently not an investment option under the Contracts. The Touchstone High Yield Fund is managed by Touchstone.

12. The investment objective of the Touchstone High Yield Fund is to achieve a high level of current income as its main goal, with capital appreciation as a secondary consideration, by investing primarily in high yield securities. The total annual expenses of the Touchstone High Yield Fund for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.10% in management fees and .70% in other expenses). Absent voluntary reimbursements by Touchstone Advisors, Inc., those expenses would have been 1.50% (.60% in management fees and .90% in other expenses). However, on February 21, 2002, Touchstone's Board of Directors voted to amend the investment advisory agreement with the Touchstone High Yield Fund to decrease the contractual management fee before waivers and reimbursements to .50% effective May 1, 2002. As of December 31, 2001, the Touchstone High Yield Fund had $17.2 million in assets. As of December 31, 2001, the average annual total returns of the Touchstone High Yield Fund, whose inception date is May 17, 1999, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.38%	n/a	n/a	n/a	−2.07%

13. Applicants seek an order permitting the substitution of shares of Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment in either of the subaccounts. Accordingly, there will be no financial impact on any contractowner. The Substitution will be effected by having each of the subaccounts that invests in the Morgan Stanley High Yield Portfolio redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the Touchstone High Yield Fund at the net asset value calculated on the same date.

14. The Substitution will be described in supplements to the prospectuses for the Contracts (''Stickers'') filed with the Commission and mailed to contractowners. The Stickers will give contractowners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contractowners with value allocated to a subaccount investing in the Morgan Stanley High Yield Portfolio that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contractowners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Morgan Stanley High Yield Portfolio, and
- For 30 days after the Substitution from the subaccounts investing in Touchstone High Yield Fund to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

15. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contractowner will be provided with a prospectus for the Touchstone High Yield Fund before the Substitution. Within five days after the Substitution, Integrity and National Integrity will each send affected contractowners written confirmation that the Substitution has occurred.

16. Integrity and National Integrity, as applicable, will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

17. Applicants believe that their request satisfies the standards for relief of section 26(c) of the Act, as set forth below, because the affected contractowners will have:

(1) Contract value allocated to a subaccount invested in a portfolio with an investment objective and investment policies substantially similar to the investment objective and policies of the substituted portfolio—both the Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund seek a high return by investing primarily in high yield securities;

(2) superior performance to that of the substituted portfolio—the Touchstone High Yield Fund has consistently outperformed the Morgan Stanley High Yield Portfolio since its inception; and

(3) current total annual expenses that are the same as those of the substituted portfolio—the Touchstone High Yield Fund has the same current total annual expenses as the Morgan Stanley High Yield Portfolio and anticipates decreasing its gross expenses as it achieves economies of scale through asset growth.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contractowner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substitute portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio. The Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund have substantially similar investment objectives and policies. The current total annual expenses for each of the portfolios are .80%. The Touchstone High Yield Fund has had consistently better performance than the Morgan Stanley High Yield Portfolio since its inception.

5. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(1) The Touchstone High Yield Fund is an appropriate portfolio to which to move contractowners with value allocated to the Morgan Stanley High Yield Portfolio because the portfolios have substantially similar investment objectives and policies.

(2) The costs of the Substitution, including any brokerage costs, will be borne by Integrity and National Integrity and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

(3) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment of either of the subaccounts.

(4) The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution and in each case will result in contractowners' contract values being moved to a portfolio with the same current total annual expenses (including lower current management fees) than the current total annual expenses of the Morgan Stanley High Yield Portfolio.

(5) Touchstone will cap total annual expenses of the Touchstone High Yield Fund at .80% of average daily net assets for a two-year period beginning on the date of the Substitution.

(6) All contractowners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contractowner's free transfers in a contract year.

(7) Within five days after the Substitution, Integrity and National Integrity will send to its affected contractowners written confirmation that the Substitution has occurred.

(8) For those contractowners who are contractowners on the date of the Substitution, Integrity and National Integrity will not increase Separate Account or Contract fees and expenses for a two-year period beginning on the date of the Substitution.

(9) The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of Integrity and National Integrity.

(10) The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

Conclusion

Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7289 Filed 3–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–8072, File No. S7–04–02]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; Request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 15, 2002. This meeting seeks to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 15, 2002. Your comments must be received by April 10, 2002 in order to be considered for discussion by conference participants.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also can be sent electronically to the following e-mail address: *rule-comments@sec.gov.* Comment letters should refer to File No. S7–04–02; if e-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW, Washington, DC 20549–0102. All electronic comment letters will be posted on the Commission's Internet Web site, *http://www.sec.gov.*[1]

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0310, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings and the securities industry since the adoption of the federal regulatory structure in the Securities Act of 1933 (the ''Securities Act'').[2] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[3] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators that can assist in carrying out that Section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;
- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 15 U.S.C. 77a *et seq.*

[3] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 2002 meeting will be the nineteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed the National Securities Markets Improvement Act of 1996 (''NSMIA'') [4] as a result. NSMIA contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 2002 Conference

The Commission and the North American Securities Administrators Association, Inc. (''NASAA'') [5] are planning the 2002 Conference on Federal-State Securities Regulation, which will be held April 15, 2002 in Washington, DC. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite specific self-regulatory organizations (''SROs'') to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, market regulation, investment management, investor education, and enforcement.

(1) Corporation Finance Issues

NSMIA amended section 18 of the Securities Act [6] to preempt state blue-sky registration and review of offerings of covered securities.[7] Covered securities, as defined by section 18, include several types of securities. One class of covered securities is securities traded on the national markets like the New York Stock Exchange, Inc. (''NYSE''), American Stock Exchange LLC (''Amex'') and the Nasdaq National Market System (''Nasdaq/NMS''). Covered securities also include registered investment company securities and some exempt securities and offerings.

The states retain some authority over offerings of covered securities despite this preemption. Except for nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain antifraud authority over all securities offerings, including offerings of covered securities.

Securities that are not covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, like those quoted on the Nasdaq SmallCap market or the over-the-counter Bulletin Board, or in the ''pink sheets.'' Securities issued under some federal exemptions from registration are not covered securities; the states retain authority to register or exempt those securities. These include securities issued in unregistered offerings under the following exemptions:

- Section 3(a)(11) of the Securities Act and Rule 147 for intrastate offerings; [8]
- Section 4(2) of the Securities Act where the offering does not meet the safe harbor requirements of Rule 506 of Regulation D; [9]
- Regulation A; [10] and
- Rules 504 and 505 of Regulation D.[11]

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. Staff from the Commission's Division of Corporation Finance and state representatives will discuss ways to increase uniformity between the systems. The group will focus primarily on the following topics:

A. Transactions Involving ''Qualified Purchasers''

Under the provisions of section 18 of the Securities Act, an additional category of covered securities is subject to preemption, *i.e.,* transactions involving qualified purchasers. This term is subject to definition by the Commission. On December 19, 2001, the Commission published a release proposing an amendment to Rule 146 under the Securities Act.[12] The proposed amendment provides a definition for the term ''qualified purchaser'' for purposes of section 18(b)(3) of the Securities Act in order to implement the provision. As proposed, ''qualified purchaser'' will be defined in the same manner as ''accredited investor,'' under Rule 501 of Regulation D.[13] If adopted, securities offered or sold to a ''qualified purchaser'' will be preempted from state registration requirements. The Commission has sought public comment on the proposed definition. Participants will discuss the proposed amendment.

B. Federal Exemptions

1. Regulation A

The participants will consider possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act. As presently constituted, the provision permits the offer and sale of up to $5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Such offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state

[4] Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[5] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[6] 15 U.S.C. 77r.

[7] 15 U.S.C. 77r(a) and (b).

[8] 17 CFR 230.147.

[9] 17 CFR 230.501 through 230.508.

[10] 17 CFR 230.251 through 230.263.

[11] 17 CFR 230.504 and 230.505. Other securities also are not considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

[12] Release No. 33–8041 (December 27, 2001) (66 FR 66839).

[13] 17 CFR 230.501.

laws, issuers may be required to provide audited financial statements. Further, the current level of exemption may be too low to invite professional underwriting interest in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consonant with investor protection.

Regulation A also permits the offering of securities in the manner of ''testing the waters'' to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

2. Form D

As the result of a cooperative effort between NASAA and the Commission, in 1982, the Commission adopted Regulation D, which was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale. [14] Issuers must also file the Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption (''ULOE'') [15] and the Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D using the EDGAR system. The conferees will discuss methods of simplifying the form for electronic filing purposes as well as the contents of the notice.

C. Securities of Blank Check Companies

A blank check issuer or company is one in the development stage with no specific business plan or purpose, or one that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.[16] In 1990, the U.S. Congress found that offerings by these kinds of issuers were common vehicles for fraud and manipulation in the market for penny stocks. The Commission has adopted several rules, as Congress directed, to deter fraud in connection with these offerings.[17]

The group will discuss matters of mutual concern relating to these offerings, including recent developments and possible new rules and revisions of existing rules.

D. General Disclosure and Other Developments Impacting the Registration and Review of Securities Offerings

On February 13, 2002, the Commission announced its intention to propose new corporate disclosure rules in an effort to improve the financial reporting and disclosure system.[18] The rule amendments would govern insider transactions and secondary market reporting, and disclosures about critical accounting policies. Generally, the proposed rules will:

- Accelerate quarterly and annual reporting—the due date for quarterly reports will be shortened from 45 to 30 days after the period end; annual reports will be due 60 days after year end, rather than 90 days;
- Require companies to post their Securities Exchange Act of 1934 (''Exchange Act'') [19] reports on their websites concurrently with Commission filings;
- Expand the list of significant events requiring current disclosure on Form 8–K, and accelerate the current due dates to no later than the second business day following the occurrence that triggered the Form 8–K filing;
- Require accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company; and
- Require disclosure of critical accounting policies in the Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A'') section of periodic reports.[20]

Participants will discuss these possible rule amendments and other initiatives aimed at improving the financial reporting and disclosure system.

(2) Market Regulation Issues

A. Business Continuity Planning for Broker-Dealers

The participants will discuss business continuity planning for broker-dealers in light of the lessons learned from the events of September 11, 2001.

B. Shorter Settlement Cycles and Immobilization of Stock Certificates

In an effort to reduce systemic risks and increase efficiencies, the Commission issued a rule in 1993 that required the industry to reduce the settlement time for securities transactions from five days to three days (T+3) by June 1995.[21] The Commission believes that the reasons identified at that time, mainly the reduction of settlement risk and an increase in efficiencies, continue to present sufficient justification to again shorten the securities settlement time.

In 2000 the Securities Industry Association (''SIA'') prepared a report, ''*The Business Case Model,*'' containing a cost-benefit analysis and a proposed implementation strategy for T+1. The report concluded that while the industry strongly supports T+1 because it would significantly reduce settlement exposure and create efficiencies, the cost of implementing the necessary systems and operational improvements would be substantial.

To offset these costs, the industry is proposing that the Commission promulgate a number of regulatory changes. One of the more controversial of the proposed changes is adding rules to discourage the issuance and use of physical certificates. The report indicates that the costs of processing physical securities and the risks inherent with the use of physical securities are significant to the industry and ultimately their customers. Therefore, in connection with shortening the settlement cycle, the industry is proposing that new securities be issued in book-entry form only. They also suggest that the Commission, or alternatively the exchanges and the National Association of Securities Dealers, Inc. (''NASD''), adopt rules to prohibit a broker-dealer from taking a sell order unless the shares are on deposit with the broker-dealer, a bank, or in the book-entry direct registration system operated by the Depository Trust Company (''DTC'').

The Commission's staff will explore with NASAA ways in which to discourage the issuance and use of physical certificates, restrictions imposed by certain state laws and

[14] 17 CFR 230.503.

[15] The ULOE provides a uniform exemption from state registration for offerings complying with Regulation D.

[16] *See* section 7(b)(3) of the Securities Act, 15 U.S.C. 77g(b)(3).

[17] 17 CFR 230.419 and 17 CFR 240.15g–8.

[18] Securities and Exchange Commission Press Release No. 2002–22 (February 13, 2002).

[19] 15 U.S.C. 78a *et seq.*

[20] Item 303 of Regulations S–B and S–K, 17 CFR 228.303 and 17 CFR 229.303.

[21] 17 CFR 240.15c6–1.

exchange listing standards regarding the issuance of physical certificates, and requiring listed companies to issue in book-entry only.

C. Possible Changes to NASD Rules Relating to Tape Recording of Communications

The participants may discuss a proposed rule change filed with the Commission by the NASD to amend NASD Rule 3010(b)(2) (the ''Taping Rule'') and NASD Interpretive Memorandum (''IM'') 8310–2.[22] Under the Taping Rule, firms that hire a significant number of employees from previously disciplined firms must employ special written procedures to supervise the telemarketing activities of their registered persons, install taping systems to record all telephone conversations between registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD Regulation. The proposed changes generally would: (1) Permit firms that become subject to the Taping Rule a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not counting certain short-term employees of disciplined firms toward the threshold levels; (3) extend the compliance deadline to install taping systems to 60 days; (4) clarify the NASD staff's authority to grant exemptions in exceptional cases only; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, NASD Regulation proposes amendments to NASD IM–8310–2 to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule.

D. Possible Revisions to Form BD

Under the regulatory scheme of the Exchange Act, broker-dealers must register with the Commission, as well as with at least one self-regulatory organization. Broker-dealers apply for registration by filing Form BD,[23] the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant or registrant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

The Commission last amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository (''CRD'') system.[24] Since the July 1999 amendments, the President signed both the Gramm-Leach-Bliley Act of 1999[25] and the Commodity Futures Modernization Act of 2000 (''CFMA'')[26] into law. On August 21, 2001, the Commission implemented Section 203 of the CFMA, which provides for expedited notice registration for intermediaries trading security futures products.[27] Specifically, the Commission adopted Form BD–N and related rules to permit futures commission merchants and introducing brokers that are both registered with the Commodity Futures Trading Commission and members of the National Futures Association to register by notice with the Commission as broker-dealers for the limited purpose of trading security futures products (*i.e.,* futures on individual securities and narrow-based security indexes).

These developments may indicate the need for possible further amendments to Form BD. Other amendments to the form may also be considered, including (1) requiring owners of non-voting stock to disclose their identity; (2) requiring the disclosure of unregistered satellite offices and expanding the disclosure requirements; and (3) requiring the disclosure of the Commission number of a registered entity if the entity does not have a CRD number.

E. Regulatory Regime for Certain Brokers

A task force of the American Bar Association's Small Business Committee is exploring ways to develop a streamlined regulatory regime for persons who are classified as brokers because they earn transaction-based compensation to facilitate capital raising securities transactions, but who do not provide the secondary market services or other services that traditional broker-dealers provide to investors. The Commission's staff, as well as NASD and NASAA personnel, have held several discussions with the task force and its representatives. Moreover, the Government-Business Forum on Small Business Capital Formation, sponsored by the Commission, has discussed similar issues.

Many of these discussions have focused on the speed of the current registration process, and on whether it would be possible to accelerate the process for those persons. Other issues that have been raised include questions about what substantive regulations should apply to these brokers.

The Commission's staff believes that further discussion by representatives of the Commission, the NASD and state securities regulators would be helpful in defining the scope of any problems that exist, and in finding ways to improve the regulatory regime for these brokers.

F. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: examination priorities, summits and examination coordination, branch office examinations, complaint trends, and anti-money laundering compliance.

(3) Investment Management Issues

A. Electronic Filing and the Investment Adviser Registration Depository (''IARD'')

Investment advisers registered with the Commission completed their transition to electronic filing on IARD between January 1 and April 30, 2001 using amended Form ADV.[28] New advisers applying for registration with the Commission after January 1, 2001 also filed electronically through IARD since paper filings are no longer accepted. State registered advisers began switching to the electronic filing process on IARD during 2001. Conferees will review and discuss the performance of IARD during its initial year of operation. The transition of investment adviser representatives to electronic filing in 2002 will be discussed. Conferees also will discuss issues related to the future use and development of IARD.

B. Division of Regulatory Authority

NSMIA divided regulatory responsibility for investment advisers between the Commission and state securities regulators. Advisers generally register with the Commission if they have assets under management of $25 million or more, or if they advise registered investment companies. Advisers with less than $25 million in assets under management generally must register with the appropriate state securities authorities. Approximately 7,500 advisers currently are registered

[22] SR–NASD–2002–04.

[23] 17 CFR 249.501.

[24] Release No. 34–41594 (July 2, 1999) [64 FR 37586].

[25] Pub. L. 106–102, 113 Stat. 1338 (November 12, 1999).

[26] Pub. L. 106–554, 114 Stat. 2763 (December 21, 2000).

[27] Release No. 34–44730 (Aug. 21, 2001) [66 FR 45137].

[28] 17 CFR 279.1.

with the Commission. The conferees will discuss their experiences with implementing the provisions of NSMIA. Jurisdictional issues related to increased use of the Internet by advisers also will be discussed. Conferees also will discuss ways to work together to help advisers understand and comply with their regulatory responsibilities.

C. Current Issues and Rulemaking Initiatives

Conferees will discuss a number of rulemaking initiatives under the Investment Advisers Act of 1940 [29] and state securities laws that respond to changes in advisory business practices and developments in local, national and global financial markets. Conferees will discuss regulatory developments related to the implementation of privacy requirements for advisers and an adviser's duties to its clients. Conferees also will discuss adviser continuing education needs in light of the expanding financial responsibilities of advisers and dynamic business trends. Ways to enhance the understanding advisers have of their regulatory responsibilities also will be reviewed and discussed.

(4) Investor Education and Assistance Issues

The Commission and NASAA currently pursue a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and the Commission intends to complement those efforts to the greatest extent possible. Participants will discuss the following investor education initiatives and potential joint projects:

A. Facts on Saving and Investing Campaign

In the spring of 1998, the Commission and NASAA in conjunction with the Council of Securities Regulators of the Americas (''CSA'') launched the ''Facts on Saving and Investing Campaign.'' Led primarily by securities regulators, the campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Participants will discuss this year's campaign, including the Canadian Securities Administrators' heightened involvement and future campaign initiatives. The participants also will discuss other initiatives for international investor education.

B. Investor Summit

The Commission's staff will update NASAA on current plans for the first Investor Summit to be held by the Commission in late spring 2002. The summit aims to give investors nationwide an opportunity to weigh in on the broad policy issues that affect them, including ways to improve corporate disclosure.

C. Financial Literacy 2010

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust (''IPT'') joined forces to launch ''Financial Literacy 2001,'' an unprecedented campaign targeting 25,000 high school teachers across the United States of America. Recently renamed ''Financial Literacy 2010'' to reflect the ongoing commitment to offer the financial education program to teachers, the program aims to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed and updated a state-by-state customized classroom guide and have provided aggressive distribution and teacher training. Representatives from the states will brief the Commission's staff on the updated program that contains components of economics, the progress of the program, and its dissemination to economics teachers.

D. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission's staff will discuss its continuing efforts to educate investors on how to use the Internet to invest wisely. The Commission's staff will also update the status of the Commission's initiative to launch fake scam sites on the Internet that warn investors about ''get-rich-quick'' schemes.

E. New Programs on Investor Education

Participants will discuss ideas for new investor education programs, including joint NASAA and Commission initiatives.

F. Investor Education Resources

Participants will view the CSA's segment on young investors produced for a national television show, and view the Ontario Securities Commission's Web site created for youth that includes games, quizzes, screen savers, and videos. Participants will also further discuss the most efficient and effective ways to provide educational resources to individuals at both a national and a grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues of mutual interest.

(6) General

There are a number of matters that are applicable to all, or a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of staff examiners and analysts and information sharing. In addition, a committee of the National Conference of Commissioners on Uniform State Laws is in the process of drafting a new version of the Uniform Securities Act. The Uniform Securities Act is a model uniform state securities law statute. Two versions are currently in force—the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The new version will modernize and update the law for many changes including, for example, NSMIA, technology advances, and internationalization of securities trading.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7288 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[29] 15 U.S.C. 80b–1 *et seq.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45603; File No. SR–CBOE–00–12]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Expansion of the Equity Hedge Exemption From Position and Exercise Limits

March 20, 2002.

I. Introduction

On March 31, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the current equity hedge exemption to eliminate position and exercise limits for certain qualified hedge strategies.

On July 20, 2001, the CBOE filed Amendment No. 1 with the Commission.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on August 17, 2001.[4] On February 22, 2002, the CBOE submitted Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Accordingly, the CBOE proposes to amend Interpretation .04 of Exchange Rule 4.11 to expand the definition of a ''qualified'' hedged position. Listed below are the proposed qualified hedge strategies and their accompanying examples.

(i) Positions hedged or covered with the underlying security or securities readily convertible into stock (long call/short stock or short call/long stock or long put/long stock or short put/short stock). This hedge strategy is currently exempt pursuant to the equity hedge exemption provision contained in Exchange Rule 4.11; contracts are covered on a one-for-one basis.

For example, account ABC is short 5,000 GE Apr 35 calls and long 500,000 shares of GE common stock. Account ABC is also short 1,000 GE April 40 calls but has no corresponding stock hedge. The account is exempt on 5,000 contracts hedged with stock and the short 1,000 GE April 40 call position is not considered hedged and thus applied to the applicable position limit.

(ii) Reverse Conversion (buy call/sell put (same expiration)/sell stock).[6] For example, assume account ABC establishes the following position:

Long 25,000 GE April 35 calls
Short 25,000 GE April 35 puts
Short 2,500,000 shares of GE common stock

Under the proposed rule change, two options contracts (*i.e.*, one long call and one short put) will be treated as one contract for hedging purposes. Each reverse conversion option position must be hedged with 100 shares of the underlying security to remain exempt. Account ABC increases its position by establishing a long call position of 5,000 April 40 contracts with no qualified hedge. Option contracts held by account ABC number 55,000 on the short call long put side of the market. The 50,000 contract reverse conversion position is a qualified hedge strategy and is thus exempt from the position and exercise limit. The remaining 5,000 contracts and any future positions established by the account in which a non-qualified strategy is employed would be added to the account's existing 5,000 contract position and applied to the standard position limit.

(iii) Conversion (sell call/buy put (same expiration)/buy stock).[7] The components and hedge treatment of the conversion strategy is the same as the reverse conversion except that the option component of the position is on the short side of the market (*i.e.,* short call, long put) and is hedged with long stock.

(iv) Collar (sell call/buy put, both out-of-the-money when established with the same expiration where the strike price of the short call exceeds the strike price of the long put/buy stock).[8] A collar strategy provides downside protection by the use of put option contracts and finances the purchase of the puts through the sale of short call option contracts. The goal of this strategy is to bracket the price of the underlying security at the time the position is established. For example, assume that the price of an underlying equity, XYZ, is $53 and account ABC is long 5000 shares of XYZ at $53. Account ABC sells 50 XYZ April 55 calls and purchases 50 XYZ April 50 puts. Under the collar exemption, one collar (*i.e.,* one short call, and one long put) must be hedged with 100 shares of the underlying security to remain exempt. Additionally, both call and put components of the option strategy must be out-of-the-money at the time the position is established, both contracts must expire at the same time, and the strike price of the short call must exceed the strike price of the long put position. One leg of the option position (*i.e.*, short call or long put) can be an OTC contract guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

(v) Box Spread (buy call, sell put at one strike price, sell call, buy put at another strike price). Assume that account ABC maintains the following position:

Long 5,000 April 35 calls
Short 5,000 April 40 calls
Long 5,000 April 40 puts
Short 5,000 April 35 puts

This position is a qualified box spread and would be exempt from the position limit. Any future option positions established that do not meet the requirements of the qualified hedge strategies would be applied to the account's applicable position limit.

(vi) Listed vs. OTC Options Spreads (options are generally to be within one strike of each other and no more than

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 19, 2001 (''Amendment No. 1''). In response to comments from Commission staff, the Exchange submitted Amendment No. 1, which (i) deletes language contained in Exchange Rule 4.11 Interpretation .04(b) regarding the limitation on the number of contracts that can be maintained under the equity hedge exemption and (ii) includes examples of the proposed qualified hedge strategies.

[4] *See* Securities Exchange Act Release No. 44681 (August 10, 2001), 66 FR 43274.

[5] *See* Letter from Christopher R. Hill, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the CBOE established a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

[6] For these strategies one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under CBOE Rule 4.11, Interpretation .02. For purposes of this rule filing, an OTC option contract is defined as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

[7] *Id.*

[8] *Id.*

one expiration month apart).[9] Member firms that conduct an over-the-counter options business utilize the listed options market to hedge their customer facilitated OTC transactions. It is the CBOE's understanding that some member firms participate in stock buy-back programs whereby the firm purchases OTC put option contracts from the subject corporation, the corporation, in turn, will be assigned its short put position, thereby ''buying back'' its own stock.

To hedge this position, the firm will sell put option contracts in the listed market. For example, Firm ABC purchases 50,000 XYZ puts with a strike price of 63.34 expiring in 1/19/03 from XYZ Corporation. At the expiration of the OTC contract, the firm will sell to XYZ Corporation 5,000,000 shares of its common stock at a price of $63.34. To hedge its position, the firm will sell put option contracts on the CBOE; often at a strike price close to the noted OTC contract with the same expiration date as the OTC contract. OTC contracts hedged on a one-for-one basis against listed option contracts would be exempt from the position limit. As the OTC position generally does not change, the Exchange would require the exempt firm to forward to the Exchange, on the Monday following the monthly expiration, the status of its OTC position.

Within the list of proposed hedge strategies eligible for an equity hedge exemption, the Exchange proposes that the option component of a reversal, conversion, or collar position be treated as one contract rather than as two contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous[10] purchase/sale of both a call and put component against the appropriate number of shares underlying the option (generally 100 shares), the Exchange believes that the position should be treated as one contract for hedging purposes.

Under the proposed rule change, the existing standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. The exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified will be similar to those currently in place for equity hedge exemptions. Currently a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of section 6 of the Act[12] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the CBOE's proposal to expand the hedge exemption from position and exercise limits. Given the market neutral characteristic of all the proposed qualified hedge strategies (except covered stock positions), the Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the Exchange will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the CBOE will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. Although the exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange), the exemption will remain in effect only to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation.

In addition, as described above, a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange

[9] Hedge transactions and positions established pursuant to this strategy are subject to a position limit equal to five times the standards limit established under CBOE Rule 4.11, Interpretation .02.

[10] At or about the same time.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

The Commission believes these reporting requirements will help the CBOE to monitor options positions and ensure that only qualified hedges are being exempt from position and exercise limits. To the extent that any position raises concerns, the Commission believes that the CBOE, through its monitoring, will be promptly notified, and the Commission would expect the CBOE to take any appropriate action, as permitted by its rules.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving Amendment No 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 establishes a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component. Setting the position and exercise limit at this level should provide Exchange members greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5)[16] and 19(b)(2)[17] of the Act to accelerate approval of Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–12 and should be submitted by April 17, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR-CBOE–00–12), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7327 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45605; File No. SR–GSCC–2001–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Establishing a Loss Allocation Cap for Dealers Acting as Brokers on Substantially All of Their Repurchase Agreement Trades

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 16, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and an on August 31, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. 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 proposed rule change establishes an account-based loss allocation process for dealers that act as brokers in certain repurchase agreement transactions.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its current loss allocation rule concerning non-inter-dealer broker (''dealer'') members who act as brokers in certain of their repurchase agreement (repo) transactions. Under the proposed amended rule, repo transaction accounts of these dealers will be subject to the same $5 million per event absolute loss allocation cap currently applicable to inter-dealer brokers (''IDBs'') instead of an unlimited loss allocation liability. The proposed rule change is designed to afford appropriate relief for these dealers while not unfairly burdening other members.

(i) Current Loss Allocation Procedure

If upon liquidating a defaulting member's positions GSCC incurs a loss due to the failure of the defaulting member to fulfill its obligations to GSCC, GSCC looks to the collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's collateral is insufficient to cover the loss, the defaulting member's most ''recent'' trading partners will be looked to, on a pro rata basis, in order to satisfy the ''remaining loss.''

Before the loss can be allocated to the defaulting member's most ''recent'' trading partners, GSCC must first determine the proportion of the loss that arose in connection with member-brokered transactions and non-member brokered transactions and the proportion that arose in connection with direct transactions.

To the extent the remaining loss is determined by GSCC to arise in connection with member brokered transactions, GSCC's rules provide that fifty percent of the loss will be allocated to netting members that are category 1

[2] The Commission has modified parts of these statements.

IDBs or category 2 IDBs pro rata based upon the dollar value of each such IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. The remaining fifty percent of the loss will be allocated to the dealer netting members pro rata based upon the dollar value of the trading activity through IDBs of each such dealer netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with member brokered transactions, an IDB netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than $5 million. A dealer netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to dealer netting members. To the extent that this cap is applicable, any excess amounts not collected from individual netting members, whether an IDB or a dealer, will be reallocated to the netting membership in general, pro rata based on average daily clearing fund deposit requirement over the twelve-month period prior to the insolvency. However, even with the reallocation, an IDB netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million.

To the extent a remaining loss is determined by GSCC to arise in connection with non-member brokered transactions, it will be allocated among the recent category 2 IDB netting members that were parties to such non-member brokered transactions pro rata based upon the dollar value of each such category 2 IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with non-member brokered transactions, there is no loss-allocation cap.

To the extent a remaining loss is determined to arise in connection with direct transactions, it will be allocated among the recent counterparty netting members pro rata based on the dollar value of the trading activity of each such netting member's trading activity with the defaulting member compared, netted, and novated during the recent trading period. For purposes of an allocation of loss determined to arise in connection with direct transactions, there is no loss-allocation cap.

Under the current loss allocation procedure, dealer netting members acting as brokers on all or substantially all of their repo transactions do not enjoy the $5 million per event absolute loss allocation cap applicable to IDBs. Consequently, these dealers likely would be disproportionately assessed for allocation loss in the current environment.

(ii) Proposed Changes

The proposed rule change addresses the manner in which the loss allocation procedure described in subsection (i) above applies to dealers that act as brokers in their repo transactions. Specifically, the proposed rule change would establish an account-based loss allocation process whereby the segregated repo accounts of these dealers would be treated in the same way as IDB accounts.

In order to accomplish this, GSCC is proposing to add two new definitions to its rules, ''non-IDB repo broker'' and ''segregated repo account.'' A non-IDB repo broker, with respect to activity in its segregated repo account, is a dealer netting member that GSCC has determined operates in the same manner as a broker and participates in GSCC's repo netting service pursuant to the same requirements imposed under the rules on IDB netting members that participate in that service. These requirements include keeping their brokered repo activity (with two GSCC netting members on both sides of each trade) in a separate account, the segregated repo account.

Since GSCC's loss allocation procedures with respect to remaining losses distinguish between brokered transactions and direct transactions and since it is with respect to non-IDB repo brokers' brokered transactions that GSCC is proposing to give relief, the proposed rule filing would amend: (i) The definition of ''brokered transaction'' to include transactions to which a non-IDB repo broker, with regard to activity in its segregated repo account, is a party; (ii) the loss allocation rule applicable to brokered transactions to include references to non-IDB repo brokers and the activity in their segregated repo accounts; and (iii) the loss allocation rule to provide non-IDB repo brokers with regard to activity in their segregated repo accounts with a cap on their total loss allocation obligation of $5 million as is currently applied to IDB netting members.

All of the other activity processed by non-IDB repo brokers outside of their segregated repo broker accounts would continue to be subject to the loss allocation rules applicable to dealer netting members.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it provides for a more equitable loss allocation process among GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW,

Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–10 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7291 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–45607; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 20, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on February 8, 2002, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through June 30, 2002.

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act [3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through March 31, 2002.[6]

The Commission today is extending MBSCC's temporary registration as a clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the calendar year 2002.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or institution proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–22 and should be submitted by April 17, 2002.

It is therefore ordered that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through June 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7292 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45604; File No. SR–MBSCC–2001–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding the Monitoring of MBSCC Participants' Financial Condition and Activities

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on November 27, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and on December 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. 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 proposed rule change strengthens the process regarding MBSCC's monitoring of its participants' financial condition and activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

To strengthen MBSCC's monitoring of participants' financial condition and activities, as well as to conform to MBSCC's standard practices, MBSCC is proposing the following modifications to its rules: (i) Add a requirement that registered brokers and dealers submit copies of supplemental reports filed with the Commission pursuant to Rule 17a–11 to MBSCC; (ii) establish a formal surveillance status mechanism; (iii) allow non-domestic participants to submit required financial statements prepared in accordance with their home country Generally Accepted Accounting Principles (''GAAP''); and (iv) expand the financial criteria used by MBSCC for calculating a participant's financial ability.

The first proposed modification to the rules would require broker-dealer participants to submit copies of supplemental reports filed pursuant to

[3] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(a).

[2] Letter from Jeffrey F. Ingber, Managing Director, General Counsel and Secretary, MBSCC (February 8, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; and 44831 (September 21, 2001) 66 FR 49728.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

Rule 17a–11 to MBSCC concurrently with their submission to the Commission. Rule 17a–11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum requirements. Such notices should provide MBSCC with early warnings of such broker-dealers' potential financial problems.

The second proposed modification would enhance MBSCC's policies and procedures regarding its participant surveillance procedures by establishing a formal surveillance status mechanism. The proposed rule change would establish a tiered surveillance mechanism wherein the degree of risk posed by a participant would be appropriately categorized so MBSCC would be able to react more swiftly to changes in a participant's condition.

The third proposed modification would allow non-domestic participants to meet their financial reporting requirements to MBSCC by submitting financial statements prepared in accordance with their home country GAAP. MBSCC's rules currently require these participants to submit financial statements prepared in accordance with U.S. GAAP. MBSCC has found this requirement to be burdensome and unnecessarily restrictive. MBSCC also proposes to permit these participants to use another recognized accounting standard (such as, for example, International Accounting Standards) deemed acceptable by MBSCC. In both cases (when a participant submits financial statements prepared in accordance with their home country GAAP and when a participant submits financial statements prepared in accordance with some other recognized accounting standard deemed acceptable by MBSCC), the participant must provide MBSCC with a discussion of the material variations of the accounting standards used from U.S. GAAP.

The fourth proposed modification allows MBSCC to use net asset value or other applicable indicia in calculating a participant's financial ability. MBSCC's rules do not currently specify the types of financial indicia that MBSCC may use to calculate a participant's net worth for determining whether the participant meets MBSCC's minimum financial requirements. MBSCC's analysts currently use the appropriate financial indicia for each type of participant. For example, shareholders equity is used to determine the financial ability of a bank whereas net asset value is more appropriate for determining the financial ability of certain types of funds, such as most registered investment companies. The proposed rule change would expand the language in MBSCC's rules to permit use of the appropriate financial indicia.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance MBSCC's monitoring of participants' financial condition and activities and thereby should protect MBSCC and its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–2001–06 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7295 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45602; File No. SR–NYSE–2001–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the New York Stock Exchange, Inc. Regarding Method of Delivery of Annual Reports and Proxy Materials

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') 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 NYSE. The Exchange submitted Amendment No. 1 to the proposed rule change on January 15, 2002.[3] The Exchange submitted Amendment No. 2 to the proposed rule change on March 5, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE made technical changes to its rule text. *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 (''Amendment No. 1'').

[4] In Amendment No. 2, NYSE made additional minor technical changes to its rule text. *See* letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 (''Amendment No. 2'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 203.01, 204.04, 402.04, and 402.10 of the Exchange's Listed Company Manual (''Manual'') in respect of method of delivery of annual reports and proxy materials. The proposed amendment will specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Listed Company Manual

203.00 Annual and Interim Reporting Requirements

* * * * *

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and distribute to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than 120 days (225 days for Non-US issuers) after the close of each fiscal year. Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-US issuers are encouraged to do so when possible.) When the annual report is [mailed] *distributed* to shareholders, two copies should be sent to the Exchange together with advice as to the date of [mailing] *distribution* to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders the Form 10–K (or Form 20–F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10–K or Form 20–F) is *distributed* [mailed] to shareholders, two copies should be sent to the Exchange, together with advice as to the date of *distribution* [mailing] to shareholders. Distribution *shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* ([s]*See,* for example, [materials referenced in Listed Company Manual section 402.04(B)] *the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release No. 34–42728, File No. S7–11–00.* [by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.]

* * * * *

(A) through (D)—No change.

(E) Occasional Delay in Issuance of Statements.

* * * * *

So far as the [three months time limit of the listing agreement] *120 day (225 day) time limit stated in the first paragraph of this Section 203.01* is concerned, the Exchange, while ready to extend such time limit on the basis of necessity, does not feel free to do so on the basis of convenience. For example it cannot consent to a delay in the issuance of the statements just to make possible their simultaneous *distribution* [mailing] with the proxy material.

* * * * *

204.00 Notices by the Company to the Exchange

* * * * *

204.04 Annual Report

The Exchange requires that two copies of the company's annual report be provided to the Exchange when it is [mailed] *distributed* to shareholders. These reports should be accompanied by notice to the Exchange as to the date [mailed] *distributed* to shareholders.

* * * * *

402.00 Proxies

* * * * *

402.04 Proxy Solicitation Required

* * * * *

(B) *Proxy materials shall be in such format and shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* [Electronic Delivery of Proxy Materials. As permitted by applicable state and federal law (including any interpretations thereof by the SEC) a company may arrange for the delivery of its proxy material by electronic means (including by posting on company's web site with an electronic mail notice to the beneficial owner of its availability on the web site) to beneficial owners who have given prior written consent to such a delivery. Such consent may be in the form of electronic mail. Such arrangements should be made in coordination with any intermediaries that are record holders of the securities. Proxies may also be delivered by electronic means by beneficial owners as permitted by applicable state and federal law (including any interpretation thereof by the SEC) and if appropriate arrangements have been made with any intermediaries that are record holders of the securities.] (See, for example, the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release [Nos. 33–7856,] *No.* 34–42728, File No. S7–11–00). *Companies should also note the NYSE Rules (451 and 465) applicable to members and member organizations regarding the furnishing of annual reports and proxy materials to account holders.*

* * * * *

402.10 Charges by Member Organizations for Distributing Material

* * * * *

(A) through (B) No change.

(C) Charges for Interim Report *Distributions* [Mailings].

* * * * *

''Householding'' of Reports

Rules 451 and 465 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions or reports, statements or other materials to beneficial owners having the same address, provided *they comply with applicable SEC rules with respect thereto (see SEC Rule 14b–1 under the Securities Exchange Act of 1934).* [that (i) at least one such report or statement is transmitted to a beneficial owner at that address; and (ii) any beneficial owner having that address, to whom a report is not sent, has agreed thereto in writing.]

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

In 1999, the Exchange filed amendments to Section 203 of the Manual clarifying that listed companies were permitted to make electronic delivery of annual reports to beneficial holders, as long as beneficial holders had given prior written consent to such delivery. The Commission approved the rule change in March 2000.[5]

Last year, the Exchange filed an amendment to Section 402.04 of the Manual extending the same electronic delivery option to delivery of proxies and proxy material, subject to the same affirmative written assent from beneficial holders.[6] Responding to comments from the Commission staff, the Exchange modified the proposed amendment to specify that companies arranging for the electronic delivery of proxy materials must do so as permitted by and in compliance with applicable state and federal law, including any applicable interpretation by the Commission.[7] The amended rule change was approved by the Commission in March 2001.[8]

Thereafter, the Exchange received comments from listed companies maintaining that the Exchange's requirement of prior written consent for delivery of proxy materials to beneficial holders is more restrictive than the prerequisites contained in the Commission's current interpretations. The Exchange has also been asked whether delivery of these materials on a compact disk is permissible, and whether delivery of a CD by mail is delivery of the information by electronic means.

The Exchange staff discussed all of the foregoing with the Exchange's Legal Advisory Committee (''LAC'') in June of this year. Specifically, it was noted that the Commission in effect had pre-empted the field in terms not only of the content of proxy material and the annual report, but also in regulating delivery of the material to investors, issuing specific interpretations since 1995. The LAC agreed that in view of this, it is advisable for the Exchange to cease attempting to legislate for listed companies how they must act in this regard. Accordingly, as recommended by the LAC, the Exchange proposes to eliminate from Section 402.04 any specific requirements regarding the format and method of delivery, specifying instead that companies should distribute proxy materials in such format and by such methods as are permitted or required by applicable law and regulations. To be helpful the Exchange will retain the informational references to the applicable Commission interpretive releases, and will cross-reference the Exchange's rules 451 and 465 applicable to members and member organizations when they furnish information to account holders. To be consistent, the Exchange also proposes to make similar amendments to Sections 203.01 and 204.04, dealing with annual reports.

Finally, the Exchange is proposing to make housekeeping changes to Section 203.01(E) of the Manual relating to time limits for the delivery of annual reports and to Section 402.10 of the Manual relating to householding of reports to conform to related rule changes effected last year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–40 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7296 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 42574 (March 24, 2000), 65 FR 17326 (March 31, 2000).

[6] File No. SR–NYSE–2000–21.

[7] Applicable Commission interpretations, which are cited in Section 402.04, as amended, include October 1995 Release *Use of Electronic Media for Delivery Purposes;* May 1996 Release *Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information;* and April 2000 Release *Delivery of Proxy Statements and Information to Households.* (Release No. 34–36345, File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; Release No. 34–42728, File No. S7–11–00.)

[8] Securities Exchange Act Release No. 44133, 66 FR 18134 (April 5, 2001).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45594; File No. SR–PCX–2002–05]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

March 19, 2002.

On January 18, 2002, the Pacific Exchange, Inc. (''PCX''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of $2,500 in connection with their appeal of the Corporation's decision to delist a security.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[6] which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among issuers. The Commission believes that the fees are reasonable because they are designed to recoup the costs of processing requests for review and holding the subsequent proceedings.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PCX–2002–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7293 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45396 (February 5, 2002), 67 FR 6569.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45595; File No. SR–PCX–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to 30-Second ITS Commitment Expirations

March 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend PCXE Rule 7.66(b)(2)(F) to conform to the Seventeenth Amendment of the Intermarket Trading System (''ITS'') Plan, which provides for a 30-second commitment expiration period.[3]

The text of the proposed rule change is available upon request from Office of the Secretary, the PCX and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) (order approving the Seventeenth Amendment of the ITS Plan). The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) (adopting the restated ITS Plan).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCXE Rule 7.66(b)(2)(F) to provide for a 30-second commitment expiration period for orders received through the ITS, consistent with the Seventeenth Amendment to the ITS Plan. The Exchange notes that the 30-second commitment expiration period is a six-month pilot program under the ITS Plan that commenced on January 7, 2002 and would remain available until the last trading day of the sixth full calendar month following such commencement.

Presently, PCXE Rule 7.66(b)(2)(F) provides that the sender of an ITS commitment may designate a time period during which a commitment will be irrevocable following acceptance by the system. The ITS Plan provides for three irrevocable time-period options consisting of 30-seconds (or ''T–30s''), one minute and two minutes. Accordingly, PCX proposes to replace the current rule text in PCXE Rule 7.66(b)(2)(F), which states that there are ''two'' irrevocable time-period options, with the word ''three'' thereby making the rule text consistent with the ITS Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [4] of the Act in general, and furthers the objectives of section (b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–2002–07 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7294 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] On January 29, 2002, the PCX submitted a draft proposal and asked the Commission to consider the proposal pursuant to section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the draft proposal as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45606; File No. SR–PCX–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX is proposing to change its marketing fee for certain options and to declare a marketing fee for recently listed options. A copy of the proposed new schedule of fees is available at the PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options and to adopt new marketing fees for newly listed options beginning at the commencement of the March 2002 trade month and continuing until further notice. The PCX proposes to change the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Only the amount of the fee is being changed. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable it to compete with other markets in attracting options business.

Basis

The Exchange believes that the proposal is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

[3] *See* Securities Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 PCX 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

Because the PCX has designated the foregoing as a fee change pursuant to section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–14 and should be submitted by April 17, 2002.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7328 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3955]

Office of the Coordinator for Counterterrorism; Designation Under Executive Orders

AGENCY: Department of State.

ACTION: Designation under Executive Orders 13224 and 12947.

Pursuant under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Pursuant to section 1(a)(ii)(A) of the Executive Order 12947 of January 23, 1995, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East Peace Process.

Dated: March 25, 2002.

Mark Wong,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7492 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 3952]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of Foreign Terrorist Organizations.

Pursuant to section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective March 27, 2002, the following organizations as foreign terrorist organizations:

Al-Aqsa Martyrs Brigade also known as the Al-Aqsa Martyrs Battalion

Asbat al-Ansar

Salafist Group for Call and Combat also known as the Salafist Group for Preaching and Combat also known as GSPC also known as Groupe Salafiste pour la Prédication et le Combat

Dated: March 19, 2002.

Francis X. Taylor,

Ambassador, Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7212 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Ghana has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Ghana qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–

200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Ghana as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Ghana has taken, I have determined that Ghana has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Ghana'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–7374 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-European Free Trade Association Mutual Recognition Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States is considering a proposal to negotiate a mutual recognition agreement (MRA) with European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—*i.e.*, Norway, Iceland, and Liechtenstein. Such an agreement would parallel the provisions of the 1998 U.S.–EU MRA, but would be restricted to sectoral annexes on telecommunications equipment, electromagnetic compatibility (EMC) and recreational craft. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability of negotiating a mutual recognition agreement in these sectors with EFTA EEA.

DATES: Comments should be submitted no later than Friday, May 3, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508, tel: (202) 395–3475. All other questions should be addressed to Jim Sanford, Director for European Affairs at (202) 395–3320; or Jason Buntin, Director for EFTA Affairs at (202) 395–4620.

SUPPLEMENTARY INFORMATION: Since 1995, the European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—i.e., Norway, Iceland, and Liechtenstein—have requested that the United States negotiate a mutual recognition agreement (MRA) that would parallel the agreement concluded between the United States and the European Community (EC) in 1998. The United States has indicated that it would continue to review EFTA's interest in an MRA as implementation of the U.S.–EU MRA proceeded. Now that the U.S.–EU MRA sectoral annexes on telecommunications equipment, EMC and recreational craft are fully operational, the United States is in a position to consider an MRA with EFTA EEA in these sectors. The possible addition of other sectors in the future will be considered in the context of agency priorities and the availability of agency resources.

In 1994, the Agreement on the European Economic Area (EEA) created a single market ensuring free circulation of goods, persons, capital and services among the 15 EU Member States and the three EFTA EEA states. Norway, Iceland, and Liechtenstein, are integrated into the European Community Single Market and thereby apply the internal market legislation (acquis communautaire). This ensures that the EEA EFTA States and their economic operators are subject to the same rights and obligations as their counterparts in the Community, and that a product placed on the market in accordance with the EU technical requirements freely circulates within the EEA. Therefore, U.S. products marketed according to EC requirements also automatically comply with the requirements of the EEA EFTA States.

An agreement between the United States and the EEA EFTA States would ensure U.S. producers direct market access to the EFTA part of the Community's Single Market. In effect, an MRA with EFTA EEA would extend the benefits of selected annexes of the U.S.–EU MRA to the markets of Norway, Iceland, and Liechtenstein.

US–EU MRA: In December 1998, the United States and the EU began implementation of the U.S.–EU Mutual Recognition Agreement. The U.S.–EU MRA is designed to facilitate trade, while maintaining our current high levels of health and safety protection. Once fully implemented, this MRA will permit U.S. exporters to conduct required conformity assessment procedures (*e.g.*, product tests, inspections, and certifications) in the United States according to EU requirements, and vice versa. The sectoral annexes of the U.S.–EU MRA cover the following products and associated conformity assessment procedures: (1) Telecommunications and information technology equipment; (2) network and electromagnetic compatibility (EMC) for electrical products; (3) electrical safety for electrical products; (4) good manufacturing practices (GMP) for pharmaceutical products; (5) product assessment for certain medical devices and quality systems-related inspections for most medical devices; (6) and safety of recreational craft. Each sectoral annex contains specific provisions with respect to the products and associated conformity assessment procedures covered in the annex.

Currently, three sectoral annexes of the U.S.–EU MRA are fully operational (telecommunications equipment, EMC

and recreational craft). The U.S.–EU mutual recognition agreement annexes on telecommunications equipment covers telecommunications terminal equipment, including radio transmitters and information technology equipment. The annex on electromagnetic compatibility (EMC) covers equipment subject to EU and U.S. radio interference and compatibility requirements, including radios and VCRs imported into the United States and most electrical and electronic equipment exported to the EU. The recreational craft annex covers the safety certification of small boats.

PUBLIC COMMENTS: USTR invites written comments from interested persons on the desirability of negotiating an MRA with EFTA covering the sectors of telecommunications equipment, electromagnetic compatibility, and recreational craft. Comments are invited in particular on: (a) The benefits for pursuing an MRA covering these sectors; and (b) any specific issues regarding an MRA covering any of the sectors. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

Written comments, requests, or other information submitted in connection with this request, except information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof, in the form specified above. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–7373 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of Trade Agreements Act

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was orginally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Procurement Thresholds Under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

SUMMARY: Executive Order 12260 requires the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*), which implements U.S. obligations under the World Trade Organization Government Procurement Agreement (GPA) and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above the specified U.S. dollar thresholds. The U.S. Trade Representative has determined that, for the calendar years 2002–2003, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities listed in U.S. Annex 1

(1) Procurement of goods and services—$169,000.

(2) Procurement of construction services—$6,481,000.

B. Sub-Central Government Entities listed in U.S. Annex 2

(1) Procurement of goods and services—$460,000.

(2) Procurement of construction services—$6,481,000.

C. Other Entities listed in U.S. Annex 3

(1) Procurement of goods and services—$518,000.

(2) Procurement of construction services—$6,481,000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities listed in the U.S. schedule to Annex 1001.1a–1

(1) Procurement of goods and services—$56,190.

(2) Procurement of construction services—$7,304,733.

B. Government Enterprises listed in the U.S. schedule to Annex 1001.1a–2

(1) Procurement of goods and services—$280,951.

(2) Procurement of construction services—$8,990,862.

FOR FURTHER INFORMATION CONTACT: Questions relating to the implementation of NAFTA Chapter 10 may be directed to Karissa Kovner, USTR Director for International Procurement Negotiations (202/395–3063), Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20508.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–4120 Filed 2–20–02; 8:45 am]

BILLING CODE 3190–01–P

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was orginally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

[FR Doc. R2–4120 Filed 3–26–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

Environmental Impact Statement: Orange, Polk, and Hillsborough Counties in Florida

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), DOT.

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

SUMMARY: The FRA and FHWA are issuing this notice to advise the public that the agencies will prepare an environmental impact statement (EIS) for a proposed Florida High Speed Rail project between Orlando and Tampa, Florida.

FOR MORE INFORMATION CONTACT: David Valenstein, Environmental Program Manager, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington DC 20590, (202) 493–6368 and/or George Hadley, Environmental Programs Coordinator,

Federal Highway Administration, 227 North Bronough Street, Tallahassee, Florida 32301, (850) 942–9650 extension 3011.

SUPPLEMENTARY INFORMATION: The FRA and FHWA in cooperation with the Florida High Speed Rail Authority, will prepare an EIS for a proposal being considered by the Authority to construct a high speed rail project between Orlando, and Tampa, Florida. The project would be approximately 90 miles long. The proposed project may include acquisition of right of way and construction of guide way structures and track, stations, park and ride lots, storage and maintenance facilities, and other ancillary facilities. The facilities would be build to allow trains to operate at speeds in excess of 120 miles per hour. The proposed high speed rail system would provide a new mode of intercity travel to link major metropolitan areas and interface with airports, mass transit and highways to provide added capacity to meet increases in intercity travel demand in a manner sensitive to, and protective of Florida's unique natural resources.

Alternatives under consideration include: (1) The ''no build alternative''; (2) build alternatives in a variety of corridors between Orlando and Tampa; and, (3) a variety of high speed rail technology. The corridor alternatives traverse areas where various social, economical, and environmental resources and issues are believed to exist. The social, economical and environmental resources and issues may include but are not limited to: community and neighborhood, noise, wetlands, cultural resources, water quality, safety, residential and business relocations, wildlife and habitat, land use planning, parklands, economic, and floodplains.

Notice 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 expressed an interest in this proposal. The Federal agencies and The Authority will hold interagency and public meetings and public hearings in several locations in the project area. Information on the time and place of the public meetings and hearings will be provided in the appropriate local news media. There are plans to hold a scoping meeting on April 30, 2002 in the Orlando/Tampa, Florida area.

Comments and suggestions are invited from all interested parties to insure the full range of issues related to the proposed action and alternatives are addressed and all significant issues are identified. Comments and questions concerning the proposed action should be directed to the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 19, 2002.

James E. St. John,

FHWA Division Administrator, Tallahassee, Florida.

[FR Doc. 02–7278 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–6285]

Parts and Accessories Necessary for Safe Operation; Renewal of Fuel Tank Exemptions for Vehicles Manufactured by the General Motors Corporation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the General Motors Corporation (GM) for exemptions for the vehicles specified in this notice. Those exemptions are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Renewal of the exemptions enables motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by GM which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemptions have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that renewing the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgment page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

GM's Application for Exemptions

GM applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On December 20, 1999 (64 FR 71186), the Federal Highway Administration (FHWA) published a notice of intent to grant GM's applications. The FHWA requested public comment on GM's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on April 26, 2000 (65 FR 24531). In that notice (at 65 FR 24532–24533), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are

capable of receiving fuel at a rate of approximately 10 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in '' § 393.67, respectively.

On December 27, 2001 (66 FR 66972) the FMCSA announced its intent to renew GM's exemption. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to renew the exemptions because the commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket since April 26, 2000, the date the original exemption was granted, indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27, 2001, notice for another two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with gross vehicle weight ratings over 10,000 pounds. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid for two years from the date of approval, unless revoked earlier by the FMCSA. GM, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the original exemption, the motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain either a ''J'' or a ''K'' in the forth position of the VIN. In addition, the seventh position of the VINs on the G-Van would contain a ''1.''

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7362 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5867]

Parts and Accessories Necessary for Safe Operation; Fuel Tank Exemptions for Vehicles Manufactured by the Ford Motor Company

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the Ford Motor Company (Ford) for exemptions for the vehicles specified in this notice. The exemptions sought are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). These exemptions enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the current exemptions for similarly-equipped Ford CMVs have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that granting the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to this docket in response to the previous notice by using the universal resource locator (URL) *http://dms.dot.gov,* and by requesting the docket referenced at the beginning of this notice. You can examine and copy this document and all comments received at the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

Background

Ford's Applications for Exemptions

Ford first applied in April 1999, for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the Federal Highway Administration (FHWA) published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on December 20, 1999 (64 FR 71184). In that notice (at 64 FR 71185), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable

rules in § 393.67, respectively. The exemptions were granted for two years.

On November 2, 2001, (66 FR 55727) the FMCSA published a notice of its intent to renew these exemptions. The FMCSA received one comment, from Ford. Ford requested that the FMCSA renew its exemption for the fuel tanks covered in that notice. On December 27, 2001 (66 FR 66970), the agency published a notice granting the application for renewing these exemptions.

In its comment to the November 2, 2001, notice, Ford also advised the agency that it sought additional exemptions to cover the fuel tanks of additional models of E-series vehicles that were not in production at the time of the original 1999 petition, and for certain F-series vehicles.

In a second notice, also published December 27, 2001 (66 FR 66971), the FMCSA announced its intent to grant exemptions for these additional vehicles. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to grant the exemptions for the additional Ford vehicles specified in the second December 27, 2001, notice. The commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27 notice for a two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating the Ford vehicles specified in the next paragraph. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid until March 29, 2004, unless revoked earlier by the FMCSA. Ford, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the other exemption granted to Ford, the motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs for the additional E-series vehicles contain E35 or E55 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, F7UA–9002D*, YC25–9002–D* (a new fuel tank for E37 series vehicles), or 2C24–9002–E* (a new fuel tank for E55 series vehicles) where the asterisk (*) represents a ''wild card'' character (any character of the alphabet). The VINs for the F-series vehicles contain an F53 code in the fifth, sixth, and seventh positions. The fuel tanks are marked with part numbers 1C34–9K007–F*, 1C34–9K007–G*, and 1C34–9K007–H* where the asterisk (*) represents a ''wild card'' character (any character of the alphabet).

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7363 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 28, 2002.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0533.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Deal at *dian.deal@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii)

the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Qualifications For Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), later amended and re-codified by Public Law 103–272, 108 Stat. 874 (July 5, 1994), required that FRA issue regulations to establish any necessary program for certifying or licensing locomotive engineers. The collection of information is used by FRA to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers. The collection of information is also used by FRA to verify that railroads have established required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually; tri-annually.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.9—Waivers	685 railroads	5 waivers	1 hour	5	$170
240.101/103—Certification Prog	685 railroads	10 programs	200 hours/40 hours	1,840	62,560
240.101/103—Cert. Prog.—Final Rev	685 railroads	10 reviews	1 hour	10	340
240.105(a)—Selection Criteria for DSLEs.	685 railroads	10 reports	1 hour	10	490
240.105(b)—DSLE Approval Plan—Amendments.	685 railroads	75 amendments	1 hour	75	2,550
240.111—Duty to Furnish Data on Prior Safety Conduct—Car Drvr.	685 railroads	400 calls	10 minutes	67	3,149
240.1111—Driver's License Data	13,333 candidates	13,333 requests	15 minutes	3,333	156,651
240.111/App. C—RR Notification to candidate—NDR Match.	685 railroads	267 requests	30 minutes	134	5,427
240.111(g)—Notice to RR of Absence of License.	40,000 candidates	4 letters	15 minutes	1	47
240.111/App. C—Written Response from candidate on Driver's Lic Data.	685 railroads	40 comments	15 minutes	10	470
240.113—Notice to RR Furnishing Data on Prior Safety Conduct—Diff. RR.	13,333 candidates	534 requests/resp	15 min./30 min	200	7,671
240.115—Candidate's Comments on Prior Saf. Conduct Data.	13,333 candidates	133 responses	30 minutes	67	3,149
240.117—Criteria—Oper. Rules Compl. Data.	685 railroads	3 violations/appeals	12 hours	36	1,764
240.121—Criteria—Vision/Hearing Acuity Data—New Railroads.	10 railroads	10 copies	15 minutes	3	102
240.121—Criteria—Vision/Hearing Acuity Data—Cond. Certification.	685 railroads	17 reports	1 hour	17	578
240.121—Criteria—Vision/Hearing Acuity Data—Not Meeting Standards.	685 railroads	10 notifications	15 minutes	3	141
240.201/221—List of Certified Loco. Engineers.	685 railroads	685 updates	15 minutes	171	5,814
240.201/221—List of Qualified DSLEs	685 railroads	685 updates	15 minutes	171	5,814
240.201/223/301—Loco. Engineers Certificate.	40,000 candidates	13,333 certificates	5 minutes	1,111	37,774
240.201/223—List of Des. Persons Authorized to Sign DSLE Certificate.	685 railroads	20 lists	15 minutes	5	170
240.205—Data to EAP Counselor	685 railroads	267 records	5 minutes	22	1,034
240.207—Medical Certificate	40,000 candidates	13,333 certificates	70 minutes	15,555	528,870
240.209/213—Written Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.211/213—Perf. Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.215—Record Keeping—Loc. Eng	685 railroads	13,333 records	10 minutes	2,222	75,548
240.219—Denial of Certification	13,333 candidates	150 letters/resp.	1 hour	150	6,075
240.219—Denial of Certification—Notices.	685 railroads	75 notifications	1 hour	75	2,550
240.227—Canadian Certification Data	Canadian railroads	200 certifications	15 minutes	50	1,700

REPORTING BURDEN—Continued

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.229—Requirement For Joint Operations Territory.	685 railroads	184 calls	5 minutes	15	705
240.303—Annual Op. Monitoring Obs ..	40,000 candidates	40,000 tests	2 hours	80,000	3,920,000
240.303—Annual Operational Observ ..	40,000 candidates	40,000 tests	1 hour	40,000	1,960,000
240.305—Eng. Notification of Non-Qualification.	40,000 candidates	10 notifications	5 minutes	1	47
240.305—Engineer Notice of Loss of Qualification.	40,000 candidates	2 letters	30 minutes	1	47
240.307—Rev. of Certification—Notice of Eng. Disqualification.	685 railroads	500 letters	1 hour	500	17,000
240.309—RR Oversight Resp.—RR Annual Review.	42 railroads	42 reviews	80 hours	3,360	188,160
240.309—RR Oversight Resp	15 railroads	10 annotations	15 minutes	3	147
240.401—Engineer Appeal to FRA	40,000 Engineers	97 petitions	12 hours	1,164	54,708
240.405—RR's Response to Appeal	685 railroads	97 responses	6 hours	582	28,518
240.407—Request For a Hearing	685 railroads and 40,000 Engineers.	16 Hearing requests ..	30 minutes	8	376
240.411—Appeals	685 railroads and 40,000 Engineers.	2 Appeal notices	2 hours	4	94

Total Responses: 164,568.

Estimated Total Annual Burden: 204,313 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 19, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–7351 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. See also 49 CFR 211.7 and 211.9. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

North County Transit District

[Docket Number FRA–2002–11809]

The North County Transit District (''NCTD''), located in Oceanside, California, seeks a permanent waiver of compliance from certain CFR Parts of Title 49, specifically: Part 210, Railroad Noise Emission Compliance Regulations; Part 217, Railroad Operating Rules; Part 218, Railroad Operating Practices; Part 219, Control of Alcohol and Drug Use; Part 221, Rear End Marking Devices—Passenger, Commuter and Freight Trains; Part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; Part 225, Railroad Accidents/Incidents: Report Classification, and Investigations; Part 229, Railroad Locomotive Safety Standards; Part 231 Railroad Safety Appliance Standards; Part 238, Passenger Equipment Safety Standards; Part 239, Passenger Train Emergency Preparedness; and Part 240, Qualification and Certification of Locomotive Engineers.

NCTD seeks approval of shared track usage and waiver of certain FRA regulations involving planned light rail passenger operations on the same track with freight trains between Oceanside, CA and Escondido, CA (Oceanside-Escondido Rail Project). FRA will have jurisdiction over the 22-mile portion of the NCTD Oceanside-Escondido Rail Project that is also used for freight rail carrier service. The freight operator is The Burlington Northern and Santa Fe Railway Company (BNSF), and BNSF currently conducts operations over this trackage. NCTD proposes to operate light rail vehicles on the same track as BNSF freight trains, but under temporal separation. See *Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). See also *Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

Since FRA has not yet completed its investigation of NCTD's petition, the agency takes no position at this time on the merits of NCTD's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board, and that person will participate in the board's consideration of NCTD's waiver petition.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2002–11809) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including NCTD's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.* Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent

practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above-referenced facility.

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–7353 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Southern Indiana Railway, Inc.

[Waiver Petition Docket Number FRA–2002–11669]

Southern Indiana Railway, Inc. of Sellersburg, Indiana seeks a permanent waiver of compliance from the requirements of 49 CFR part 223 (Safety Glazing Standards) for two diesel-electric locomotives, SIND 103 and SIND 104. The subjects of this petition are Model S–3 locomotives built by American Locomotive Company (Alco) in 1950.

These locomotives are used on five (5) miles of single track through mostly rural or lightly populated areas, interchanging with CSX and the Louisville and Indiana Railroad. Southern Indiana Railway reports that they have never had an employee injury due to broken locomotive glazing and have no history of previous glazing related accidents or injuries. They describe the current glazing as single pane safety plate glass in good condition.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (e.g., Waiver Petition Docket Number FRA–2002–11669) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, D.C. 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–7354 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972 Formerly FRA Docket No. 87–2; Notice No. 14]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendments to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts-Extension of Massachusetts Bay Transit Authority (MBTA) and CSX Transportation (CSXT) Temporary Operating Protocols.

SUMMARY: FRA makes two amendments to its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). In these amendments, FRA extends previously granted exceptions that allowed MBTA and CSXT to follow temporary operating protocols. For both MBTA and CSXT, the exceptions now run until July 1, 2002, to allow MBTA time to complete equipping its locomotives as required for ACSES service, and to allow CSXT time to complete testing of Amtrak-supplied software.

DATES: The amendments to the Order are effective March 27, 2002.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web site (*www.dms.dot.gov*) and click on the ''Help'' menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In six subsequent notices, FRA amended the Order to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; and 67 FR 6753, February 12, 2002.

Background

FRA is making the amendments to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendments to this Order are necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendments to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

Extension of MBTA Temporary Operating Protocols

This is the latest in a series of amendments that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. MBTA has had repeated difficulties in equipping sufficient locomotives with ACSES by the timetable specified in the Order. It is FRA's understanding, however, that Amtrak and MBTA have reached an agreement on what is needed for MBTA to complete equipment of its locomotive fleet for ACSES service.

Amtrak and MBTA agree that 40 MBTA locomotives must be equipped with an FM–8 ACSES configuration. MBTA currently has more than 40 ACSES-equipped locomotives, but only 24 of these have an FM–8 configuration. MBTA has the materials to equip its remaining 16 ACSES-equipped locomotives with an FM–8 configuration, but estimates that it will need four days to equip each locomotive, including transit time. Using this estimate, MBTA has asked for a final extension of the temporary protocols to allow it time to complete equipment of its fleet of ACSES-equipped locomotives. FRA is pleased that Amtrak and MBTA now agree on equipment needs, and will therefore grant MBTA a last extension to use the temporary operating protocols until July 1, 2002. Other than the final extension granted above, the MBTA temporary operating protocols specified in Notice No. 11 (66 FR 34512, June 28, 2001) remain in effect without change.

Extension of CSXT Temporary Operating Protocols

On June 28, 2001, in Notice No. 11, FRA granted CSXT a relief period from the implementation schedule specified in the Order. FRA has extended this relief period several times to allow CSXT time to test new Amtrak operational software. FRA is extending the date by which CSXT must complete software testing to July 1, 2002 since Amtrak is continuing to make adjustments to its new operational software.

Other than the extension for software testing explained above, the CSXT temporary operating protocols specified in Notice No. 11 remain in effect without change.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Paragraph 11 is amended as follows:

11. Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

3. *Paragraph 12 is amended to read as follows:*

12. CSX Transportation (CSXT) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, CSXT must adhere to the following protocols if it becomes necessary to dispatch a CSXT train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

Issued in Washington, DC, on March 15, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7352 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–11911]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35001 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on December 27, 2001.

DATES: Comments must be submitted before April 26, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5335(a) and (b) National Transit Database (*OMB Number: 2132–0008*)

Abstract: 49 U.S.C. Section 5335(a) and (b) require the Secretary of Transportation to maintain a reporting system by uniform categories to accumulate mass transportation financial and operating information and a uniform system of accounts and records. Each year, transit authorities that receive FTA funding submit data to the National Transit Database. The data that is submitted is used in statutory formulae to apportion over $4 billion in federal funds back to those agencies. In addition, federal, state, and local government, transit agencies/boards, labor unions, manufacturers, researchers, consultants and universities use the National Transit Database for making transit related decisions. State and local governments also use the National Transit Database in allocating funds under 49 U.S.C. Section 5307. National Transit Database information is essential for understanding cost, ridership and other national performance trends, including transit's share of urban travel. It would be difficult to determine the future structure of FTA programs, to set policy, and to make funding and other decisions relating to the efficiency and effectiveness of the Nation's transit operations without the National Transit Database.

Estimated Total Annual Burden: 238,136 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: March 22, 2002.

Timothy B. Wolgast,

Deputy Associate Administrator for Administration.

[FR Doc. 02–7365 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34060]

Midwest Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will County, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of conditional grant of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Midwest Generation, LLC (Midwest) of a line of railroad, approximately 4,007 feet long, to serve its coal-fired generating plant in Joliet, Will County, IL.[1]

DATES: The exemption is subject to our further consideration of the anticipated environmental impacts of the proposal and will not become effective until the environmental review process is completed. The Board will then issue a further decision addressing the environmental issues and establishing an effective date for the exemption, if warranted, subject to any necessary conditions. Petitions to reopen must be filed by April 16, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34060, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; (2) Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728 (Midwest counsel); and (3) Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664 (IC counsel).

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da–2–Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available at our Web site at *www.stb.dot.gov.*

Decided: March 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7244 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority—Construction of a Line of Railroad in Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of ruling on fee waiver.

SUMMARY: The Surface Transportation Board (Board) grants an appeal of the denial of a fee waiver request, but reaffirms that henceforth it will narrowly apply its rule providing for a waiver of filing fees for state and local government entities, as originally intended.

DATES: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Vernon A. Williams, (202) 565–1650 [TDD/TTY for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: This decision addresses an appeal of a Board order denying a request for waiver of a filing fee. Under the law, the Board is required to assess fees upon parties filing pleadings seeking to engage the Board's processes. The fees that the Board charges were established by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Regulations Governing Fees for Services*, 1 I.C.C.2d 60 (1984), and they have been amended on various occasions.

The Board's fee program is described fully in 49 CFR 1002.2. Under the provisions of 49 CFR 1002.2(e)(1), a government entity may request a waiver of the otherwise applicable filing fee. In *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement*, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000) (*Policy Statement*), the Board reviewed how the government-entity fee waiver provision had been used by ''state or local government entit[ies] acting in a proprietary capacity as [carriers]'' (*id.* at 3), specifically citing cases in which ''states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party.'' *Id.* The Board expressed the view that, in the past, waivers had been too readily issued, and emphasized that, for the future, it would closely adhere to the strict guidelines established by the ICC in determining whether to grant a waiver. In particular, the Board stated (*id.* at 4, emphasis in original) that ''fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, * * * and comes before the Board in that capacity.''

In this case, Pemiscot County Port Authority (Pemiscot) filed a request with the Office of the Secretary for waiver of the $51,500 filing fee required in connection with a petition for a construction exemption under 49 U.S.C. 10502. Because Pemiscot would be seeking authority to construct and operate (through a third party operator) a line of railroad, by letter dated December 10, 2001, Pemiscot's request for waiver of the fee was denied. On March 8, 2002, Pemiscot submitted an untimely appeal, which we will accept for filing, of the decision denying the fee waiver request. In its appeal, Pemiscot argues that even though it will retain a residual common carrier obligation if it contracts with a third party to operate the proposed line, the project that it wants to pursue would ''convey[] a public benefit, * * * the project would not exist but for public funding, and * * * the transaction does not entail any effort to gain an advantage over another party.'' Pemiscot also argues that a waiver is in the best interest of the public and that denial of the waiver would impose an undue hardship on it.

Pemiscot has clearly not shown that the denial of its waiver request was erroneous, and indeed, the decision follows closely the guidelines laid out in the *Policy Statement.* Nevertheless, because a party in a different case was granted a fee waiver after issuance of the *Policy Statement* under circumstances not substantially different from those prevailing here, we will grant

[1] On June 19, 2001, Midwest filed a petition under 49 U.S.C. 10901(d) to require the Illinois Central Railroad Company (IC) to allow Midwest's proposed construction to cross IC's track. The proceeding is docketed as STB Finance Docket No. 34060 (Sub-No. 1), *Midwest Generation, LLC—Petition for Line Crossing Authority Under 40 U.S.C. 10901(d).* The crossing proceeding remains pending.

Pemiscot's appeal and waive the filing fee that should be required in this case. However, in the future, we will construe the waiver provision narrowly, as we said we would do in the *Policy Statement.*

Decided: March 21, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7339 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–49–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–49–88 (TD 8546), Limitations on Corporate Net Operating Loss (§ 1.382–6).

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1381.

Regulation Project Number: CO–49–88.

Abstract: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after ownership change under section 382 of the Internal Revenue Code, including an election to make the allocation based on a closing of the books as of the change date.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 0.1 hr.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7348 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545–1776.

Form Number: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 231 hours.

Estimated Total Annual Burden Hours: 4,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7349 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0094.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–4169 is used to gather the necessary information to determine from certain applicants service information, place of residence, evidence held by the applicant to prove service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. The information collected is used in determining eligibility for benefits based on Commonwealth Army or recognized guerrilla service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35700.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: March 15, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–7311 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0101.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0101'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

c. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S–1.

d. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

e. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V–1.

f. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

g. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

h. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

i. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

j. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

k. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

l. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

m. DIC Parent's Eligibility Verification Report, VA Form 21–0514–1.

n. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

o. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516–1.

p. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

q. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517–1.

r. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

s. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518–1.

t. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

u. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C–1.

v. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

w. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Eligibility Verification Reports are used to report changes in entitlement factors in VA's income-based benefit programs, pension and parents' Dependency and Indemnity Compensation (DIC). Any individual who has applied for or receives pension or parents' DIC must promptly notify VA in writing of any changes in entitlement factors.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 23, 2001, at pages 58782–58783.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,947 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: On occasion.

Estimated Number of Respondents: 293,894.

Dated: March 7, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7312 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register

Vol. 67, No. 59

Wednesday, March 27, 2002

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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality; Meeting

AGENCY: Natural Resources Conservation Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to discuss critical air quality issues in relation to agriculture. The emphasis of the meeting will be on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public.

DATES: The meeting will convene Wednesday, May 1, 2002, at 9 a.m., and continue until 4 p.m. The meeting will resume Thursday, May 2, 2002, and continue from 9 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service, at the address below, on or before April 19, 2002.

ADDRESSES: On May 1, 2002, the meeting will be held in the Williamsburg Room in the Jamie L. Whitten Federal Building at 12th Street and Jefferson Dr., SW., Washington, DC 20250. On May 2, 2002, the meeting will be held in Room 333 at the Hall of States, 444 North Capitol Street, Washington, DC 20001. Written material and requests to make oral presentations should be sent to Beth Sauerhaft, USDA/NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013. Due to the heightened security measures in place, submission of the names and affiliations for those planning to attend the meeting on May 1, 2002, will expedite entry into the Federal building.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the May 1 and 2, 2002, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at: *http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.*

Draft Agenda of the May 1 and 2 Meeting

A. Welcome to Washington, DC

- Local officials

B. Approve minutes of the Phoenix, Arizona, January 16–17, 2002, AAQTF meeting

C. EPA Update

- EPA official—Expectations regarding regulation of agriculture
- National Academy of Sciences Scientific Assessment update
- Regional Planning Organizations update—potential impacts to agriculture
- Title V update
- Update on monitoring and speciation work across country
- Comprehensive Environmental Response, Compensation, and Liability Act; Emergency Planning and Community Right-to-Know Act update/discussion

D. Subcommittee Business

- Research Priorities and Oversight Subcommittee
- Emissions Factors Subcommittee
- Concentrated Animal Feeding Operation Subcommittee
- Voluntary/Incentive Based Program Subcommittee
- Follow-up Subcommittee
- Agricultural Burning Subcommittee
- Title V Subcommittee
- Monitoring Subcommittee
- Implementation Subcommittee

E. New Topics

- President's Global Climate Change Initiative
- Odor control and particulate capture/dispersion—windbreaks, other BMPs
- Iowa CAFO study
- Regulatory choices at the State level

F. Next Meeting, time/place

G. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than April 19, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to Beth Sauerhaft no later than April 19, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, statutes enforced by USDA also prohibit discrimination on the basis of political beliefs and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD).

To file a complaint of discrimination to USDA, write to the Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410; or call (202) 720–5964 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on March 7, 2002.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 02–7279 Filed 3–26–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1211]

Grant of Authority; Establishment of a Foreign-Trade Zone, Jefferson County, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the North Central Pennsylvania Regional Planning and Development Commission, a Pennsylvania not-for-profit corporation (the Grantee), has made application to the Board (FTZ Docket 19–2001, filed 4/27/01), requesting the establishment of a foreign-trade zone at a site in Jefferson County, Pennsylvania, adjacent to the Pittsburgh Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (66 FR 23001, 5/7/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 254, at the site described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 13th day of March 2002.

Foreign-Trade Zones Board.

Donald L. Evans,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 02–7333 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocations in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received requests to revoke two antidumping duty orders in part.

EFFECTIVE DATE: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Heavy Forged Hand Tools (hammers/sledges, and picks/mattocks) from the People's Republic of China and Certain Preserved Mushrooms from Indonesia.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2003.

	Period to be reviewed
Antidumping Duty Proceedings	
France:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–427–816	2/1/01–1/31/02
Usinor S.A.	
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–533–817	2/1/01–1/31/02
Steel Authority of India, Ltd.	
Certain Preserved Mushrooms, A–533–813	2/1/01–1/31/02
Agro Dutch Foods, Ltd.	
Weikfield Agro Products, Ltd.	
Himalaya International, Ltd.	
Stainless Steel Bar, A–533–810	2/1/01–1/31/02
Isibars Limited	
Mukand Ltd.	
Venus Wire Industries Limited	
Viraj Alloys, Ltd.	
Viraj Viraj Forgings, Ltd.	
Viraj Impoexpo Ltd.	
Viraj Smelting	
Viraj Profiles	
Viraj Group	
Forged Stainless Steel Flanges, A–533–809	2/1/01–1/31/02
Metal Forging Rings & Bearings	
Snowdrop Trading, Pvt. Ltd.	
Viraj Group	
Bhansali Ferromet Pvt. Ltd.	
Echjay Forgings Ltd./Pushpaman Exports	

	Period to be reviewed
Isibars, Ltd.	
Panchmahal Steel, Ltd.	
Patheja Forgings & auto Parts, Ltd.	
Viraj Forgings, Inc.	
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–560–805	2/1/01–1/31/02
PT Gunawan Dianjaya Steel	
PT Jaya Pari Steel Corporation	
PT Krakatau Steel	
Certain Preserved Mushrooms, A–560–802	2/1/01–1/31/02
PT IndoEvergreen	
PT Zeta Argo Corporation	
PT Dieng Djaya	
PT Surya Jaya	
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/01–1/31/02
Palini B Bertoli S.p.A.	
Stainless Steel Butt-Weld Pipe Fittings, A–475–828	8/2/00–1/31/02
Union Piping S.P.A.	
Coprosider S.P.A.	
Japan:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/01–1/31/02
Kawasaki Steel Corporation	
Kobe Steel, Ltd.	
Nippon Steel Corporation	
NKK Corporation	
Sumitomo Metal Industries, Ltd.	
Certain Stainless Steel Bar, A–588–833	2/1/01–1/31/02
Aichi Steel Corporation	
Mechanical Transfer Presses, A–588–810	2/1/01–1/31/02
Hitachi Zosen Corporation	
Hitachi Zosen Fukui Corp. d/b/a H & F Corp.	
Komatsu, Ltd.	
Malaysia: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	12/27/00–1/31/02
Schulz (Mfg.) Sdn. Bhd.	
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/01–1/31/02
Dongkuk Steel Mill Co., Ltd.	
The People's Republic of China: Axes/adzes,* A–570–803	2/1/01–1/31/02
Tianjin Machinery Import & Export Corp.	
Bars/wedges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Hammers/sledges,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Picks/mattocks,* A–570–803	2/1/01–1/31/02
Shandong Machinery Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Certain Preserved Mushrooms,[1] A–570–851	2/1/01–1/31/02
China Processed Food Import & Export Co.	
Compania Envasadora del Atlantico	
Gerber Food (Yunnan) Co., Ltd.	
Green Fresh Foods (Zhangzhou) Co., Ltd.	
Raoping Xingyu Foods, Co., Ltd.	
Shantou Hongda Industrial General Corporation	
Shenxian Dongxing Foods Co., Ltd.	
Natural Bristle Paintbrushes and Brush Heads,[2] A–570–501	2/1/01–1/31/02
Hunan Provincial Native Products Import & Export Corporation	
Hebei Founder Import & Export Company	
Countervailing Duty Proceedings: None.	
Suspension Agreements: None.	

*If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of natural bristle paintbrushes and brush heads from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspensed investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 20, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–7332 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Howard Hughes Medical Institute, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 01–024. *Applicant:* Howard Hughes Medical Institute, Chevy Chase, MD 20815–6789. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* October 4, 2001.

Docket Number: 01–027. *Applicant:* University of Cincinnati, Cincinnati, OH 45267–0521. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 8938, February 27, 2002. *Order Date:* June 22, 2001.

Docket Number: 02–002. *Applicant:* Fox Chase Cancer Center, Philadelphia, PA 19111. *Instrument:* Electron Microscope, Model Tecnai 12 BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* November 30, 2001.

Docket Number: 02–003. *Applicant:* Albert Einstein College of Medicine of Yeshiva University, Bronx, NY 10461. *Instrument:* Electron Microscope, Model Tecnai 20. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 67 FR 8939, February 27, 2002. *Order Date:* March 30, 2001.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–7334 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032002B]

Endangered Species; Permits

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

ACTION: Receipt of request to modify research and enhancement permit 1266.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA): NMFS has received a request to modify permit (1266) from John Glass, of REMSA, Inc. (1266).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on April 26, 2002.

ADDRESSES: Written comments on the modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated. Comments will not be accepted if submitted via e-mail or the Internet. The application and related documents are available for review in the indicated office, by appointment:

Permits, Conservation and Education Division, F/PR1, 1315 East West Highway, Silver Spring, MD 20910 (phone:301–713–2289, fax: 301–713–0376).

FOR FURTHER INFORMATION CONTACT: Lillian Becker, Silver Spring, MD (phone: 301–713–2319, fax: 301–713–0376, e-mail: Lillian.Becker@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under section 10(a)(1)(A) of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice:

Sea Turtles

Threatened and endangered Green turtle (*Chelonia mydas*)
Endangered Hawksbill turtle (*Eretmochelys imbricata*)
Endangered Kemp's ridley turtle (*Lepidochelys kempii*)
Endangered Leatherback turtle (*Dermochelys coriacea*)
Threatened Loggerhead turtle (*Caretta caretta*)

The applicant requests a modification to Permit 1266. Permit 1266 authorizes the capture by trawl, handle, flipper tag and release of sea turtles while removing them from the path of hopper dredges. The Permit authorized the take of 30 loggerhead, 7 green, 5 Kemp's ridleys, 4 hawksbills and 4 leatherback sea turtles. These animals were measured, flipper tagged and released. Modification #1 would increase the authorized annual take to 350 loggerhead, 150 green, 150 Kemp's ridley, 10 hawksbill and 10 leatherback sea turtles for the purpose of moving them out of the path of hopper dredges and to tag the sea turtles for tracking purposes. The applicant would also begin passive integrated transponder (PIT) tagging the sea turtles.

Dated: March 21, 2002.

Ann Terbush,

Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7341 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032102C]

Marine Mammals; File Application No. 1004–1656

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

ACTION: Notice of extension of comment period.

SUMMARY: The National Marine Fisheries Service is extending the comment period for the application submitted by Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, to import two killer whales (*Orcinus orca*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before April 11, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Glouster, MA, 01930–2298 (978/281–9116).

Written comments or requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan,(301/713–2289).

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

A notice of receipt of this application was published on November 30, 2001 (66 FR 59781) and the comment period closed on December 31, 2001. Based on substantive comments received during the initial comment period, NMFS requested additional information from the applicant and NMFS attempted to provide the additional information by mail to commenters who had expressed interest in the information. The comment period was reopened on February 25, 2002 (67 FR 8526) to close March 27, 2002. Due to an unforseen delay with the mail, this information did not reach the intended recipients in a timely manner. NMFS reviewed the situation and has determined that in this case, there is cause to provide for an extension of the comment period, allowing the interested parties to review the additional information and provide comments. In extending this comment period NMFS finds that a public hearing is not warranted because the issues raised by the comments can be clarified in writing. However, NMFS is providing through this notice an opportunity for additional written comments.

Dated: March 22, 2002.

Ann D. Terbush,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7340 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Application for Patent Examiners—Job Application Rating System (JARS)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–308–7400; by facsimile at 703–308–7407; or by e-mail to *susan.brown@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Vivian Clark, Policy, Analysis & Automation Division, Office of Human Resources, United States Patent and Trademark Office (USPTO), Washington, DC 20231; by telephone at 703–305–8227; or by e-mail to *vivian.clark@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Job Application Rating System (JARS) is a system by which the USPTO can rapidly review applications for employment of entry-level patent examiners. The Office of Human Resources (OHR), armed with a recommendation from a Supervisory Patent Examiner (SPE) can, in turn, rapidly make an offer of employment and support hiring actions with necessary administrative action. Over the past three fiscal years, JARS has enabled the Patent Corps to hire more than 1,600 entry-level patent examiners.

Since the inception of JARS, upgrades have increased the flexibility of the system and the speed and ease with which the Office of Human Resources can support hiring recommendations. Specifically, JARS now allows applicants to update personal information without submitting a new application. Additional form letters and reports are now available, date tracking of previous employment is significantly improved; and status tracking improvements enable users to tell who has previously updated the record and when. Future JARS upgrades will be conducted to further enhance the system.

In the current employment environment, information technology professionals and engineering graduates are in great demand. The USPTO is in direct competition with private industry for the same caliber of candidates with the requisite knowledge and skills to perform patent examination work. Consequently, it is imperative that every available technology be employed if the USPTO is to remain competitive, meet the hiring goal, and fulfill the agency's congressional commitment to reduce the pendency rate for the examination of patent applications. The information supplied to the USPTO by an applicant seeking a patent examiner position with the USPTO assists the Human Resources Specialists and hiring managers in determining whether an applicant possesses the basic qualification requirements for the patent examiner position.

JARS provides the USPTO a user-friendly online employment application process for applicants and enables the USPTO to process hiring actions in an efficient and timely manner. The online application provides an electronic real-time candidate inventory that allows the USPTO to review applications from potential applicants almost instantaneously. Given the immediate hiring need of the Patent Examining Corps, time consumed in the mail distribution system or paper review of applications delays the decision-making process by several weeks. The JARS system results in increased speed and accuracy in the employment process, in addition to streamlining labor and reducing costs.

The use of the JARS online application fully complies with 5 U.S.C. 2301, which requires adequate public notice to assure open competition by guaranteeing that necessary employment information will be accessible and available to the public on inquire. The JARS online application is fully compliant with section 508 (29 U.S.C. 794d), which requires agencies to provide disabled employees and members of the public access to information that is comparable to the access available to others.

Since the JARS online application is used as an alternative form of employment application, the collection and use of the information requires OMB approval as outlined in Section 5.1 of the Delegated Examining Operations Handbook. The Handbook provides guidance to agencies under a delegated examining authority by OPM, under the provisions of Title 5, U.S. Code, Chapter 11, Section 1104.

II. Method of Collection

The application information is collected electronically from the applicant. The application form may be completed online and then transmitted to the USPTO electronically, via the Internet. For those applicants who do not have access to a personal computer, applications are available in the Personnel Office at the USPTO, or the applicant can go to the local library to complete an application.

III. Data

OMB Number: 0651–0042.

Form Number(s): PTO–2041.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 5,000 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 30 minutes to complete the employment application, depending upon the situation. There is one form associated with this information collection, Form PTO–2041.

Estimated Total Annual Respondent Burden Hours: 2,500 hours per year.

Estimated Total Annual Respondent Cost Burden: $75,675. Using the median hourly rate for scientists and engineers of $30.27, according to the Bureau of Labor Statistics, the USPTO estimates $75,675 per year for salary costs associated with respondents.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Electronic Employment Application	30	5,000	2,500
TOTAL	.....	5,000	2,500

Estimated Total Annual Nonhour Respondent Cost Burden: $0. (There are no capitol start-up or maintenance costs associated with this information collection.)

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 22, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–7319 Filed 3–26–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber and Textile Products Produced or Manufactured in India

March 22, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59577, published on November 29, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 22, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 23, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002

Effective on March 28, 2002, you are directed to reduce the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit
Levels in Group I	
334/634	190,231 dozen.
338/339	4,729,459 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–7331 Filed 3–26–02 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Request of the National Futures Association for Approval of Interpretive Notice to NFA Compliance Rule 2–9: Supervision of the Use of Automated Order Routing Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and request for comment.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') has determined, pursuant to section 17(j) of the Commodity Exchange Act (the ''Act''), to review the National Futures Association's (''NFA's'') proposed Interpretive Notice of (the ''Interpretive Notice'') to its Compliance Rule 2–9 regarding supervision of the use of automated order routing systems (''AORSs'') that route orders through futures commission merchants (''FCMs''). The Interpretive Notice would require that NFA members adopt and enforce written procedures in the areas of security, capacity, and credit and risk management controls in connection with AORSs, but it provides flexibility for members to design procedures tailored to their own circumstances. Because NFA's policy is to set standards rather than to require specific technology, other procedures than those described in the Interpretive Notice may comply with the general standards for supervisory responsibilities imposed by NFA Compliance Rule 2–9. The proposed Interpretive Notice would become effective upon approval by the Commission. Therefore, the Commission has determined to provide an opportunity for public comment prior to its consideration of the Interpretive Notice.

DATES: Comments must be received by April 26, 2002.

ADDRESSES: Comments on the proposed rules may be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made too ''NFA Interpretive Notice Regarding Supervision of Automated Order Routing Systems.''

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418–5450, facsimile number: (202) 418–5536, electronic mail: *Ipatent@cftc.gov,* or *ccummings@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated March 1, 2002, NFA submitted to the Commission for its approval, pursuant to section 17(j) of the Act, NFA's proposed Interpretive Notice to its Compliance Rule 2–9 regarding supervision of the use of AORSs that route orders through FCMs. NFA's submission indicates that the Interpretive Notice would become effective upon approval by the Commission. NFA Compliance Rule 2–9 requires, in relevant part, that ''(e)ach Member shall diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member. Each Associate who has supervisory duties shall diligently exercise such duties in the conduct of that Associate's commodity futures activities on behalf of the Member.'' NFA believes that supervisory standards do not change with the medium used, but that the manner in which those standards are applied may be affected by technology. In order to fulfill their supervisory obligations, NFA members using AORSs must adopt and enforce written procedures to examine the security,

capacity and credit and risk management controls provided by the firm's AORSs.

NFA notes that the proposed Interpretive Notice applies to AORSs that are within an NFA member's control (including those provided by an application service provider or an independent software vendor). While a member would not be responsible for an AORS chosen by the customer and not under the member's control, the member would be required to adopt procedures that could reasonably be expected to address the trading, clearing and other risks arising from its customer relationship.

II. Description of the Interpretive Release

The proposed Interpretive Notice would require that NFA members adopt and enforce written procedures in three general areas: (1) Security procedures to protect the reliability and confidentiality of customer orders and account information; (2) capacity procedures to maintain adequate personnel and facilities for timely and efficient delivery of orders and reporting of executions, as well as for timely handling of customer complaints; and (3) credit and risk management controls to prevent customers from entering trades that could create undue financial risks for the NFA member or its other customers.

Without specifying the manner in which they are to be implemented, the proposed Interpretive Notice describes a set of essential functions under each general heading and gives non-exclusive examples to illustrate. The essential functions that are listed under security procedures include: (1) Authentication of the user; (2) encryption or equivalent protections; (3) firewalls or equivalent protections; (4) means for customers to give notice that a person is no longer authorized; (5) periodic testing; and (6) administrative oversight and supervision. The essential functions that are listed under capacity procedures include: (1) Regular evaluation of the system's capacity (with increases as needed); (2) monitoring of system capacity and performance; (3) follow-up on customer access complaints; (4) disaster recovery and redundancies; (5) prompt notice to customers of operational difficulties; and (6) advance disclosure of factors that could stress the system. The essential functions that are listed under credit and risk management controls are: (1) Pre-execution controls (to be imposed when appropriate); (2) post-execution controls and trade monitoring; (3) extra precautions for direct-access systems; and (4) review of AORS controls in conjunction with the member's regular credit and risk control procedures.

NFA has also revised the required annual self-examination to include the WebTrust℠™ Self-Assessment Questionnaire, which was developed by the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. WebTrust℠™ states that it is ''for use by electronic commerce service providers to document their business practices/transaction integrity disclosures, policies, procedures and monitoring.''

As noted earlier, the proposed Interpretive Release would become effective upon approval by the Commission. Accordingly, the Commission seeks comments on the proposed Interpretive Notice to NFA Compliance Rule 2–9 regarding supervision of the use of AORs.

Copies of the proposed Interpretive Notice will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address by telephoning (202) 418–5100.

Issued in Washington, DC on March 21, 2002, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–7345 Filed 3–26–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0005]

Federal Acquisition Regulation; Submission for OMB Review; Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form (SF) 255; Architect-Engineer and Related Services Questionnaire for Specific Project. A request for public comments was published in the **Federal Register** at 67 FR 6011 on February 8, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Cecelia Davis, Acquisition Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 255 is used by all Executive agencies to obtain information from architect-engineer (A–E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A–E firm to perform the specific project. The form is designed to provide a uniform method for A–E firms to submit information on experience, personnel, capabilities of the A–E firm to perform, along with information on the consultants they expect to collaborate with on the specific project.

B. Annual Reporting Burden

Respondents: 5,000.
Responses Per Respondent: 4.
Annual Responses: 20,000.
Hours Per Response: 1.2.
Total Burden Hours: 24,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0005, Architect-Engineer and Related Services Questionnaire for Specific Project (SF 255), in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7335 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Government Supply Sources

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor use of Government supply sources. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Acquisition Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Respondents: 300.
Responses Per Respondent: 7.
Annual Responses: 2,100.
Hours Per Response: .25.
Total Burden Hours: 525.

*Obtaining Copies of Proposals:*Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: March 13, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7336 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0044]

Federal Acquisition Regulation; Submission for OMB Review; Bid/Offer Acceptance Period

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning bid/offer acceptance period. A request for public comments was published in the **Federal Register** at 67 FR 6234, on February 11, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services

Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by providing a period of time in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Respondents: 308.

Responses Per Respondent: 40.

Annual Responses: 12,320.

Hours Per Response: .017.

Total Burden Hours: 209.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: March 19, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7337 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. A request for public comments was published at 67 FR 6911, February 14, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 26, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses Per Respondent: 2.

Annual Responses: 140.

Hours Per Response: .5.

Total Burden Hours: 70.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: March 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–7338 Filed 3–26–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the US Homeland will meet in closed session on April 16–17, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will review the Department of Defense's (DoD) responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7303 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Meeting

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Missile Defense is tentatively scheduled to meet in closed session on April 29–30, 2002; May 20–21, 2002; June 18–19, 2002; and July 15–16, 2002; at the Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA. This Task Force will develop recommendations that help guide the ballistic missile defense system (BMDS) toward a fully integrated, layered defense capable of defeating ballistic missiles in any phase of their flight.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the DSB Task Force will examine five areas: counter-countermeasures; boost phase technology; battle management and command, control, and communications; international cooperation; and the evolution of ballistic missile threats.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: March 21, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7304 Filed 3–26–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Notice of Competitive Financial Assistance for the Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Notice of Competitive Financial Assistance Solicitation.

SUMMARY: The Department of Energy (DOE) announces a competitive solicitation for applications for grants and cooperative agreements for information dissemination, public outreach, training, and related technical analysis and technical assistance activities involving renewable energy and energy efficiency. It is estimated that funding of approximately $1.2 million will be available for renewable energy programs and an additional $3 million will be available for energy efficiency programs for awards under this solicitation in fiscal year 2002. Areas of interest involving renewable energy include wind, hydrogen and geothermal technologies. Energy efficiency areas of interest include energy efficiency in the transportation, buildings, and industrial sectors. The awards may be for a period of six months to three years. Proposals will be subject to the objective merit review procedures for the *Office of Energy Efficiency and Renewable Energy (EERE).* Eligible applicants for this solicitation are profit organizations, non-profit institutions and organizations, state and local governments, universities, individuals, Native American organizations, and Alaskan Native Corporations.

ADDRESSES: The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued in the beginning of April 2002. The solicitation will include specific funding totals for each program area of interest. Applications will be due for the various program areas in mid-May 2002. The formal solicitation will be disseminated electronically as solicitation number DE–PS01–02EE10846 through *DOE's e-Center Web site and Industry Interactive Procurement System (IIPS)* located at *http://e-center.doe.gov.* You can get more information about IIPS or register your organization to use IIPS on the e-center home page. Registration is a prerequisite to the submission of an application and applicants are encouraged to register as soon as possible. A users' manual for IIIPS can be found under the help button on the main e-Center page. Assistance for IIPS related problems is available through the IIPS help desk from 8 am to 8 pm, Monday through Friday, at 1–800–683–0751.

FOR FURTHER INFORMATION CONTACT: Contact the U.S. Department of Energy, Office of Headquarters Procurement Services, Attention ME–642.1 (Larry Lansing or Tova Stein, EERE–2002), 1000 Independence Ave., SW., Washington, DC 20585, e-mail: *eere.grants@pr.doe.gov.* Questions or comments should be categorized as *administrative* or *financial assistance related.* Administrative questions or comments relate only to the operation of IIPS. All questions or comments should be directed to the attention of Mr. Lansing (for program Areas of Interest 1 and 4) or Ms. Stein (for Program Areas of Interest 2, 3 and 8)). The preferred method of submitting questions and/or comments is through e-mail. Only questions and comments coordinated

with Mr. Lansing or Ms. Stein will be considered.

SUPPLEMENTARY INFORMATION: EERE supports DOE's strategic objectives of increasing the efficiency and productivity of energy use, while limiting environmental impacts; reducing the vulnerability of the U.S. economy to disruptions in energy supplies; ensuring that a competitive electric utility industry is in place that can deliver adequate and affordable supplies with reduced environmental impacts; supporting U.S. energy, environmental, and economic interests in markets; and delivering leading-edge technologies. A key component of this program is the support of information dissemination, public outreach, training and related technical analysis and technical assistance activities to: (1) Stimulate increased energy efficiency in transportation, buildings, and industry and increased use of renewable energy; (2) accelerate the adoption of new technologies to increase energy efficiency and the use of renewable energy; (3) disseminate information to states, local governments and the public on EERE programs and technologies; and (4) address barriers to markets for EERE technologies. The purpose of this solicitation is to further these objectives through financial assistance in the following areas:

Office of Power Technologies (OPT)—The primary mission of this Office is: (1) To enable U.S. industry to complete the research, testing and field verification needed to fully develop advanced wind energy technologies that lead the world in cost effectiveness and reliability; (2) dramatically reduce dependence on foreign oil by developing a next generation hydrogen energy system to meet the President's National Energy Policy goal of reliable, affordable and environmentally sound energy for America's future; (3) provide unbiased technical assessments and information to federal, regional, and state decision makers on the benefits and costs of electric utility restructuring issues related to renewable energy and energy efficiency; (4) setting goals for the President's energy vision as part of the National Energy Policy and the Strategic Program Review; (5) develop renewable energy generation technologies capable of economically increasing the deployment of non-hydroelectric renewable generation capacity to a total of at least 25,000 megawatts by 2010; and (6) work in partnership with U.S. industry to establish geothermal energy as an economically competitive contributor to the U.S. energy supply. Financial assistance applications will be requested for information dissemination, public outreach, and related technical analysis activities involving several specific renewable technologies such as wind, hydrogen and geothermal technologies. Also, applications will be requested to perform information dissemination, public outreach and related technical assistance for: the co-sponsorship of conferences involving the Power Technologies sector; Power Technologies analysis collaborative incentives analysis, information dissemination and outreach; and electricity restructuring.

Office of Industrial Technologies (OIT)—The mission of this Office of Industrial Technologies (OIT) is to improve energy efficiency, environmental performance, and productivity of materials and process industries by developing and delivering advanced science and technology options that will: (1) Lower raw material and depletable energy use per unit output; (2) improve labor and capital productivity; and (3) reduce the generation of wastes and pollutants. OIT accomplishes its mission through its Industries: aluminum, steel, metal casting, glass, forest and paper products, chemicals, petroleum refining, agriculture-biobased products, and mining. At the national level, OIT has successfully facilitated the development of industry visions and technology roadmaps with these nine industries that are called the ''vision industries.'' Financial assistance applications will be requested to support information dissemination and outreach to facilitate multi-States implementation of the Industries of the Future program.

Office of Transportation Technologies (OTT)—The primary mission of this Office operates several programs to help promote the introduction of alternative fuel and advanced fuel and advance vehicle technology (fuels, vehicles, infrastructure) into the domestic transportation system in a safe, economical, and businesslike manner. OTT also supports the deployment of technologies, providing needed support at critical points in the transition of technologies from the laboratory to the marketplace. In addition, OTT implements many activities related to the alternative fuel provisions of the Energy Policy Act of 1992 (EPAct), including the Clean Cities program, federal fleet programs, analytical work, testing and evaluation, and regulatory efforts. Financial assistance applications will be requested to support information, dissemination and outreach activities for: co-sponsorship of conferences and events; training for local clean cities coalitions; and information dissemination and public outreach for niche markets.

Office of Building Technology, State and Community Programs (BTS)—The mission of this Office is to develop, promote, and integrate energy technologies and practices to make buildings more efficient and affordable and communities more livable. Financial assistance applications will be requested to support information dissemination, public outreach, and related technical analysis activities for the following BTS priorities: Addressing the efficient and renewable energy technology information deficit among commercial building constructors, owners, and managers; promoting energy efficiency and renewable energy utilization as a public value for residential builders and home buyers; increasing the availability of energy efficient school design, retrofit and technical resource information for school board members and school administrators; preparing the building trades, building operators, and building managers for the new generation of efficient and renewable energy technologies; promoting the widespread installation of dedicated compact fluorescent lamp fixtures; and strengthening the *Rebuild America Program* through outreach activities with stakeholder organizations representing facility managers, business officials and policy makers at colleges and universities, State and Local governments, elementary and secondary schools, and public and other low-income housing.

Federal Energy Management Program (FEMP)—The mission of the Federal Energy Management Program (FEMP) is to reduce the cost and environmental impact of government resource use by advancing energy efficiency and water conservation, promoting the use of renewable energy and managing utility costs in Federal buildings, facilities and operations. This program supports the Department's priority to lead by example through the government's own actions. FEMP accomplishes this mission, in part, by providing guidance on the use of effective energy saving technologies. Lighting systems consume approximately 40% of total building electricity, on a national average, and represent the largest single opportunity for reducing the energy use of Federal facilities. This work will provide certification of lighting professionals to help ensure that new and retrofit lighting projects exhibit the highest degree of energy efficiency and effectiveness to meet the President's National Energy Policy goal of reducing

the cost of government by reducing energy use in federal facilities. FEMP also promotes Federal leadership in energy management and increasing awareness and energy management expertise in the Federal sector by providing technical assistance to senior FEMP management and federal facility energy managers which requires technology transfer and information dissemination to broad audiences. Financial assistance will be requested to support several specific program areas such as a national lighting certification program for lighting professionals.

Additional information about the programs of the Office of EERE can be obtained at the Office's Internet site at *http://www.eren.doe.gov/ee.html.*

Issued in Washington, DC on March 21, 2002.

Beth Tomasoni,

Acting Director, Operations Division B, Office of Headquarters Procurement Services.

[FR Doc. 02–7299 Filed 3–26–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF01–1–000]

Dominion Transmission, Inc.; Notice of Site Visits

March 21, 2002.

On April 2 through April 4, 2002, and April 16 through April 17, 2002, the staff of the Office of Energy Projects will conduct pre-filing site visits of Dominion Transmission, Inc.'s (Dominion) Greenbrier Pipeline Project in Virginia and North Carolina. The project area will be inspected by automobile and on foot, as appropriate. The staff also plans to attend two Open Houses being held by Dominion on April 2 and 16 at the following locations:

April 2, 2002: Laurel Park High School, 280 Laurel Park Drive, Martinsville, Virginia 276 632–7216.

April 16, 2002: City of Eden Municipal Building, 308 East Stadium Drive, Eden, North Carolina 336 623–2110.

These Open Houses will start at 6 p.m.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. For additional information about the site visit, contact the Commission's Office of External Affairs at (202) 208–1088.

For information concerning the Open Houses contact Sean R. Sleigh, Certificates Manager for Dominion at (800) 624–3101 or (304) 627–3462.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7309 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–71–000]

State of California, ex. rel. Bill Lockyer, Complainant, v. British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co., All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services into Markets Operated by the California Power Exchange and California Independent System Operator, Respondents; Notice of Complaint

March 21, 2002

Take notice that on March 20, 2002, The State Of California, ex rel. Bill Lockyer, Attorney General of the State of California (Attorney General), submitted a Complaint alleging that sellers of energy and ancillary services to the California Power Exchange (PX), the California Independent System Operator (ISO), and the California Energy Resources Scheduling Division of the California Department of Resources (CERS) have violated Section 205(c) of the Federal Power Act (16 U.S.C. Section 824d(c)) and an express condition of their grants of market-based rate authority by failing to file their rates in the manner required by law. The Complaint alleges that Respondents' pro forma market-based rate schedules fail to provide FERC an adequate opportunity to determine in advance whether their rates are just and reasonable, and fail to provide the public with adequate notice of the rates to be charged. The Complaint further alleges that the Respondents' quarterly transaction reports, filed by up to four months after the completion of a market-based transaction, do not cure the statutory failure to file all rates prior to the time service commences. The Complaint further alleges that, even if quarterly, after-the-fact reporting of rates were found to comply with Section 205, sellers have failed to report transaction-specific information on their sales to the ISO, PX, and CERS, as required by FERC, negating any claim that their rates are on file. The Complaint seeks an order requiring sellers to: comply with the Section 205 rate filing requirement on a prospective basis; provide transaction-specific information to FERC on all sales to the ISO, PX, and CERS in calendar years 2000–2001; and, to the extent any rates charged are found to exceed just and reasonable levels, refund the difference between the rates charged and a just and reasonable rate, plus interest.

Copies of the Complaint were served via e-mail on all parties to Docket Nos. EL00–95–000 *et al.* A copy of the Complaint is available on the web site of the California Department of Justice (www.caag.state.ca.us).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 9, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before April 9, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7307 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–000; EL00–98–000]

San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference

March 20, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate a discussion between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on April 4 and 5, 2002, beginning at 9 a.m. This technical conference is to assist the CAISO in preparation of its May 1, 2002, filing, as required by Commission order 97 FERC 61,275 (2001).

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at ''*robert.pease@ferc.gov*.'' No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7306 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–042, Project No. 943–075]

Public Utility District No.1 of Chelan County, Washington; Notice of Availability of Environmental Assessment

March 21, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed Public Utility District No.1 of Chelan County's applications for license amendment to install small turbines in fishway attraction water conduits at the Rocky Reach and Rock Island Projects located on the Columbia River in Chelan and Douglas Counties, Washington, and has prepared an Environmental Assessment (EA). The project occupies lands managed by the Bureau of Land Management and the U.S. Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendments and concludes that approval of the proposed amendments with staff's modifications would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on March 14, 2002 for the above applications. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Vince Yearick at (202) 219–3073.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7308 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Petition for Declaratory Order and Soliciting Comments, Motions To Intervene, and Protests

March 21, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order

b. *Project No:* DI02–2–000

c. *Date Filed:* March 5, 2002

d. *Applicant:* Sheldon Jackson College

e. *Name of Project:* Indian River Project

f. *Location:* The project is located on the Indian River at Sitka Sound, in Sitka, Alaska, at T. 56 S., R. 63 E. This project will not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. § § 817 (b).

h. *Applicant Contact:* Donald H. Clarke, Law Offices of GKRSE, 1500 K Street, NW., Suite 330, Washington, DC 20005, telephone (202) 408–5400.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 219–2678, or e-mail address: *henry.ecton@ferc.gov*

j. *Deadline for filing comments and or motions:* April 22, 2002

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov*.

Please include the docket number (DI02–2–000) on any comments or motions filed.

k. *Description of Project:* The Indian River Project, a run-of-river development, owned and operated by Sheldon Jackson College, consists of: (1) a reservoir with a surface area of approximately 1 acre; (2) a 10-foot-high, 110-foot-long, low-head rock-filled dam; (3) a reinforced concrete intake structure; (4) a 1,000–foot-long, 42-inch-diameter steel diversion flume; (5) a screened diversion weir in an unlined canal which diverts water into a 900–foot-long, 42–inch-diameter buried wood-stave pipeline; (6) a powerhouse containing a 75–kilowatt generator; (7) a concrete tailrace discharging through two fish broodstock pens into Crescent Bay; and (8) appurtenant facilities.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room,

located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7305 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–002; RP01–484–000; RP01–486–000; RP00–139–000]

El Paso Natural Gas Co.; Aera Energy, LLC, et al., Complainants v. El Paso Natural Gas Co., Respondent; Texas, New Mexico and Arizona Shippers, Complainants v. El Paso Natural Gas Co., Respondent; KN Marketing, L.P., Complainant v. El Paso Natural Gas Co., Respondent; Notice of Public Conference

March 21, 2002.

At the March 13, 2002 Commission meeting, the Commission directed that a public conference be held to take comments on Staff's recommended basis for assigning capacity and receipt points on the El Paso Natural Gas Company system (El Paso). A description of Staff's proposal is posted on the Commission's website at *http://www.ferc.gov/calendar/commissionmeetings/discussion_papers.htm*

Take notice that on April 16, 2002 at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, the Commission Staff will hold a public conference to receive comments on Staff's capacity allocation proposal. The conference will consist of short presentations by panels of interested parties, including full requirements shippers, contract demand shippers, state interests, and El Paso. Persons interested in participating in the panels should indicate their interest by March 28, 2002 by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket RP00–336–002, *et al.* Each request to participate must include a contact person, telephone number and E-mail address. Comments addressing capacity allocation issues may also be filed on April 16, 2002.

Every effort will be made to accommodate requests to make presentations, but depending on the number of requests received, a limit may have to be placed on the number of participants or the time for presentations. To provide for a more productive conference, interested persons should coordinate their efforts and choose one spokesperson to make a statement on behalf of a group where interests coincide. Upon receipt of these requests, a subsequent notice of the conference presentation schedule will be issued.

The conference will be transcribed, so that those not attending can review the proceedings. Those interested in obtaining transcripts of the proceedings should contact Ace Federal Reporters at (202) 347–3700.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7310 Filed 3–26–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7164–1]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has contracted with DynCorp I&ET, Incorporated, to provide assistance in the enforcement of regulatory requirements under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, until September 30, 2004. DynCorp has been authorized to have access to information submitted to EPA under these statutes that may be claimed and determined to be confidential business information.

DATES: This notice is effective March 27, 2002.

ADDRESSES: Address all comments concerning this notice to Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: *gairola.sounjay@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, USEPA, Mail Code (2242A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Telephone: (202) 564–4003. Fax: (202) 564–0053. Internet mail address: gairola.sounjay@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has authorized DynCorp I&ET, Incorporated, (''DynCorp''), a contractor, to access information submitted to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act. Some of this information may be claimed and determined to be confidential business information (''CBI''). The EPA contract number is 68–W–99–072. The DynCorp corporate address is: DynCorp I&ET, Incorporated

6101 Stevenson Avenue, Alexandria, VA 22304.

Under the contract, DynCorp provides enforcement support to the Air Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance in a number of activities primarily related to the Clean Air Act. The contractor may also be called upon to provide support to other EPA offices under the other statutes. The activities in which DynCorp provides enforcement support include, but are not limited to: Analyzing evidence regarding changes or modifications made by utility power plants and the effect such changes may have on compliance with the Prevention of Significant Deterioration, New Source Review, New Source Performance Standards and other requirements of the Clean Air Act; and, Administrative support in managing documents concerning EPA investigations of utility power plants, such as photocopying and filing.

The type of information that may be disclosed includes, but is not limited to: Records related to the production of electricity, power plant construction records, Public Utility Commission records, Federal Energy Regulatory Commission records, and records of capital expenditures.

It is necessary for DynCorp to have access to these records in order to support EPA in determining whether regulated parties are in compliance with applicable regulatory requirements under the above listed statutes. DynCorp may be assisted in these activities by a subcontractor, Joyo Environmental Services of Alexandria, Virginia, working under DynCorp subcontract number K0–1–0074.

In accordance with 40 CFR 2.301(h)(2), EPA has determined that disclosure of confidential business information to DynCorp and its subcontractor is necessary for these entities to carry out the work required by this contract. EPA is issuing this notice to inform all submitters of information to the EPA under the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, that EPA may allow access to CBI contained in such submittals to DynCorp and their subcontractor as necessary to carry out work under this contract. Disclosure of CBI under this contract may continue until September 30, 2004.

As required by 40 CFR 2.301(h)(2), the DynCorp contract includes provisions to assure the appropriate treatment of CBI disclosed to contractors and subcontractors. Similar requirements are contained under 40 CFR 2.302(h), 40 CFR 2.305(h), and 40 CFR 2.306(j), for the Clean Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act, respectively. The notice is intended to meet the requirements of these regulations as well.

In accordance with 40 CFR 2.301(h)(2)(iii), EPA is affording individuals affected by this Notice an opportunity to comment on the disclosure of confidential business information to its contractor DynCorp. Comments should be addressed to the information contact given above.

Dated: March 14, 2002.

Bruce C. Buckheit,

Director, Air Enforcement Division.

[FR Doc. 02–7330 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34253; FRL–6824–7]

Imazalil; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for imazalil. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket control number OPP–34253 for imazalil, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34253 for imazalil in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8038 ; e-mail address: eckerson.dayton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for imazalil, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/. In addition, copies of the pesticide risk assessments released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–34253. 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. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number for the specific chemical of interest in the subject line on the first page of your response.

1. *By mail.* Submit comments 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.

2.*In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-docket@epa.gov or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by the docket control number of the chemical of specific interest. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for imazalil, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the imazalil RED will be made available for public comment at a future date.

EPA and United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as imazalil, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for imazalil. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The imazalil risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–6944 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34254; FRL–6829–4]

Ziram; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of EPA's process for making pesticide reregistration eligibility decisions and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the risk assessment and related documents for Ziram. This notice also starts a 60-day public comment period for the risk assessment. Comments are to be limited to issues directly associated with Ziram and raised by the risk assessment or other documents placed in the docket. By allowing access and opportunity for comment on the risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure that our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that the risk assessment for Ziram is preliminary and that further refinements may be appropriate. Risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

DATES: Comments, identified by the docket control number OPP–34254, must be received on or before May 28, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 for Ziram in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Patrick Dobak, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8180; e-mail address: Dobak.Pat@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to fruit, vegetable, and nut producers; food processors; painters; worker protection advocates; environmental groups; and the chemical industry. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/. In addition, copies of the risk assessment and certain related documents may also be accessed at http: www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34254. 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.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34254 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #1t2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0/9.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34254. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA is making available risk assessments that have been developed as part of the Agency's public participation process for making reregistration eligibility and tolerance reassessment decisions for the organophosphate and other pesticides consistent with FFDCA, as amended by FQPA. The Agency's risk assessment and other related documents for Ziram are available in the individual pesticide docket. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for Ziram.

The Agency cautions that the Ziram risk assessment is preliminary and that further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessment for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. All comments should be submitted by May 28, 2002 using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for Ziram.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 15, 2002.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–7099 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50895; FRL–6826–1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: *By mail*: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each EUP: 1921 Jefferson Davis Hwy., Arlington, VA.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the designated contact person listed for the individual EUP.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. EUPs

EPA has issued the following EUPs:

053263–EUP–1. Amendment. Cognis Corporation, 4900 Este Avenue, Cincinnati, OH 45232–1419. The EUP amendment for poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy for control of immature midges and mosquitoes was published in the **Federal Register** of October 31, 2001 (66 FR 54995) (FRL–6804–8). The original issuance allowed 1,700 pounds of the insecticide poly(oxy-1,2,-ethanediyl), alpha-isoctadecyl-omega-hydroxy to be used to treat and evaulate 67 acres of mosquitoes and midges habitats in the States of California, Florida, and South Carolina. This amendment will allow for additional use sites, bringing the count to 135 acres. The program is authorized only in the States of California, Florida, and South Carolina. This EUP is effective from October 31, 2001 to October 31, 2002. (Dani Daniel; Rm. 211, Crystal Mall #2; telephone number: (703) 305–5409; e-mail address: daniel.dani@epa.gov).

62719–EUP–45. Issuance. Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268. This EUP allows the use of 67,000 pounds of the ProFume Gas Fumigant (sulfuryl fluoride) on up to 141 structures/enclosures to evaluate the control of post harvest infestations of insect and rodent pests in walnut and raisin processing facilities, warehouses, storage bins and facilities, fumigation chambers, and permanent and temporary enclosures (tarped commodity fumigation). This EUP allows evaluation of sulfuryl fluoride as an alternative to methyl bromide in the post-harvest fumigation of stored commodities. The program is authorized only in the State of California. The EUP is effective from March 1, 2002 to March 1, 2005. Temporary tolerances were established and published in the **Federal Register** of February 7, 2002 (67 FR 5735) (FRL–6823–4) for residues of the active ingredient sulfuryl fluoride

and its metabolite fluoride in or on walnuts and raisins. (Dennis McNeilly; Rm. 213, Crystal Mall #2; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov).

Persons wishing to review these EUPs are referred to the designated contact person. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 18, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–7226 Filed 3–26–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 28, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *jbherman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jbherman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0386.

Title: Section 74.1635, Special Temporary Authorizations (STA's).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions.

Number of Respondents: 1,550.

Estimated Time Per Response: 1–4 hours (avg.).

Total Annual Burden: 2,000 hours.

Annual Reporting and Recordkeeping Cost Burden: $919,955.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 73.1635 allows licensees/permittees of broadcast stations to file for special temporary authority to operate broadcast stations at specified variances from station authorization not to exceed 180 days. Data are used by FCC staff to ensure that such operation will not cause interference to other stations.

OMB Control No.: 3060–1004.

Title: Orders Re: E911 Waivers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, state, local and tribal government.

Number of Respondents: 22.

Estimated Time Per Response: 5 hours.

Total Annual Burden: 110 hours.

Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Quarterly and semi-annual reporting requirements, recordkeeping requirement.

Needs and Uses: The quarterly and supplemental reports will be used by the Commission to monitor carrier progress in transition to E911, and thus ensure that this important effort will continue in an orderly and timely fashion. The Commission received emergency approval from the Office of Management and Budget (OMB) on February 14, 2002 (67 FR 09450, 3/1/02).

Comments submitted regarding these paperwork burdens will be reflected in the Commission's request for the three-year approval under the Paperwork Reduction Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 02–7261 Filed 3–26–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeeting, Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Friday, March 22, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Director John M. Reich (Appointive), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 22, 2002.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–7442 Filed 3–25–02; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Commission hereby gives notice that on March 21, 2002, the Westbound Transpacific Stabilization Agreement withdrew its proposed Reefer Trade Management Program, FMC Agreement No. 011325–027. The Commission, therefore, will not hold an oral hearing on the matter as noticed in the **Federal Register** on March 20, 2002, 67 FR 12993.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7368 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–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.: 010776–121.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., APL Co. Pte Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., A. P. Moller-Maersk Sealand, Nippon Yusen Kaisha, Orient Overseas Container Line Limited, P & O Nedlloyd B.V., P & O Nedlloyd Limited.

Synopsis: The proposed agreement modification extends the suspension of the conference for another six-month period, through November 1, 2002.

Agreement No.: 011708–002.

Title: Zim/COSCON Slot Charter Agreement.

Parties: Zim Israel Navigation Company Ltd., COSCO Container Lines Co. Ltd.

Synopsis: The proposed amendment adds the trade between the United States East Coast and North Europe to the scope of the agreement, extends the duration of the agreement, and makes address/contact information and other technical revisions.

Agreement No.: 011795.

Title: Puerto Rican Cross Space Charter and Sailing Agreement.

Parties: Compania Chilena de Navegacion Interoceanica S.A., Compania Sud Americana de Vapores S.A.

Synopsis: The proposed agreement authorizes the parties to cross charter container space in the trade between Puerto Rican ports, on the one hand, and ports on the Mediterranean, Black, and Caribbean Seas and ports on the West coast of South America, on the other hand. The parties request expedited review.

Dated: March 22, 2002.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7369 Filed 3–26–02; 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: 16587N.
Name: Fescargo Corporation.
Address: 1145 West Walnut Street, Compton, CA 90220.
Date Revoked: March 7, 2002.
Reason: Failed to maintain valid bond.

License Number: 12086N.
Name: Globe Cargo, Inc.
Address: 12621 Chadron Avenue, Suite B, Hawthorne, CA 90250.
Date Revoked: March 1, 2002.
Reason: Failed to maintain valid bond.

License Number: 16036N.
Name: House to House International Freight Forwarders, Inc.
Address: 2103 NW 79th Avenue, Miami, FL 33122.
Date Revoked: March 7, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3903F.
Name: Jagro California, Inc.
Address: c/o Jagro Customs Brokers and International Freight Forwarders, Inc., 290 Nye Avenue, Irvington, NJ 07111.
Date Revoked: February 13, 2002.
Reason: Surrendered license voluntarily.

License Number: 4304F.
Name: K.A.K. LLC dba Hoosier Forwarders.
Address: 1507 South Olive, South Bend, IN 46619.
Date Revoked: February 12, 2002.
Reason: Surrendered license voluntarily.

License Number: 10380N.
Name: Pana-York Maritima, Ltd.
Address: 411A N. Wood Avenue, Suite 5, Linden, NJ 07036.
Date Revoked: February 27, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3406N.
Name: Simmons International Express, Inc.
Address: 101 E. Clarendon Street, Prospect Heights, IL 60070.
Date Revoked: January 4, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15129N.
Name: Vanguard Moving & Storage Co., Inc. dba Guardship.
Address: 1901 Light Street, Baltimore, MD 21230.
Date Revoked: March 7, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7371 Filed 3–26–02; 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 part 515.

License No.	Name/Address	Date Reissued
4335F	International Services, Inc., 2907 Empress Court, Valrico, FL 33594	December 5, 2001.

License No.	Name/Address	Date Reissued
17007N	JHJ International Transportation Co., Ltd., Suite 2502, Shartex Plaza No. 88, Zun Yi Nan, Shanghai, 200336, China, and 765 Dillon Drive, Wood Dale, IL 60191 .	January 10, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–7372 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Uniworld Express, Inc., 520 Carson Plaza Ct., Suite 211, Carson, CA 90746, Officer: James Hwang, President, (Qualifying Individual).

Jet-Speed Logistics (USA), LLC dba Jet-Speed Ocean Line, 1555 Mittel Boulevard, Suite M, Wood Dale, IL 60191, Officer: Mark K. Phillips, Owner, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

The Relocation Freight Corporation of America, 200 Summit Lake Drive, Valhalla, NY 10595, Officers: Michael Cazalet, Vice President, (Qualifying Individual), P. David Franzetta, President.

Dated: March 22, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–7370 Filed 3–26–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 11, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Gertrude Myers 1988 Revocable Trust, and Marilyn Myers Bouziden, both of Alva, Oklahoma; as trustee, to acquire control of Myers Bancshares, Inc., Alva, Oklahoma, and thereby indirectly acquire voting shares of The Central National Bank of Alva, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–7343 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 2002.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo-und Vereinsbank AG, Munich, Germany; which is partially owned by Munchener Ruckversicherungs-Gesellschaft AG, Munich, Germany, which is partially owned by Allianz AG, Munich, Germany; to acquire Digital Signature Trust Company, Salt Lake City, Utah, and thereby indirectly engage through Identrus, LLC, New York, New York, in certification authority activities, and other incidental activities relating to the certification authority activities, pursuant to *Bayerische Hypo-und Vereinsbank AG*, 86 Fed. Res. Bull. 56 (2000).

Board of Governors of the Federal Reserve System, March 22, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–7342 Filed 3–26–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Meeting of the National Human Research Protections Advisory Committee (NHRPAC)

AGENCY: Office of Public Health and Science, Office for Human Research Protections, HHS.

ACTION: Notice of April 29–30, 2002 Meeting; Correction.

SUMMARY: The National Human Research Protections Advisory Committee published an announcement in the **Federal Register** on March 13, 2002, concerning the April 29–30, 2002 NHRPAC committee meeting. The announcement contained the incorrect location of the meeting.

FOR FURTHER INFORMATION CONTACT: Keisha Johnson, (301) 435–4917.

Correction

In the **Federal Register** of March 13, 2002, in FR Doc. 02–5925, on page 11343, in the second column, correct the **ADDRESSES** caption to read:

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–1600.

Dated: March 21, 2002.

Greg Koski,

Executive Secretary, National Human Research Protections Advisory Committee.

[FR Doc. 02–7280 Filed 3–26–02; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDCAssistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Ovarian Cancer Patterns of Care Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). Ovarian cancer is the second most common gynecologic cancer in the United States (U.S.), with 23,100 new cases and 14,000 deaths expected in 2001. Five-year relative survival is 95% for cases diagnosed at localized stage (25% of ovarian cancers), 79% for cases diagnosed with regional disease (9% of ovarian cancers), and 28% for those with distant disease at diagnosis (60% of ovarian cancers). Currently, screening tests that would detect ovarian cancer at an early stage and thus decrease mortality are not available.

Studies suggest that some ovarian cancer patients may not receive recommended treatment and staging. Limited information regarding recent, population-based estimates of the patterns of care for ovarian cancer treatment is available. While cancer registries generally collect information on treatment and stage of disease, detailed information is often not reported, and the accuracy of treatment and stage data collected is unknown.

The purpose of this project is to determine the type of treatment received by ovarian cancer patients, the medical specialty providing care, treatment outcome, staging procedures performed, and the accuracy of treatment and staging data in central cancer registries. A random sample of 1,500 cases per site diagnosed with first primary ovarian cancer is selected from three population-based central cancer registries (diagnosis years 1998–2000 in New York State and California, and 1997–2000 in Maryland). Because not all information may have been reported to the central cancer registries, this data will be collected from medical records of these cases for patient and tumor characteristics, treatment, and staging. Data collected will be sent to CDC investigators for analysis. The estimated annualized cost to respondents is $650,000.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Physicians (M.D., D.O.)	2250	1	15/60	563
Total	.....	.....	.....	563

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7276 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Survey of Dentists to Obtain Information that will Improve the Reporting of Oral and Pharyngeal Cancers—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Legislation in most States requires the collection of incidence and mortality data on all types of cancers to identify cancer control needs and to track progress in reducing cancer incidence and deaths. These data include the counting of cancer cases as well as basic medical information about these cases such as the stage of the tumors at time of diagnosis. The goal of this project is to help the States of West Virginia and South Carolina to improve the accuracy, completeness and timeliness of oral and pharyngeal cancer data in their Central Cancer Registries. Oral and pharyngeal cancer is the focus of this project because it is suspected that many cases of these cancers are currently undercounted and the quality of available data is in need of improvement. In addition, oral and pharyngeal cancers have very poor 5-year survival (less than 50%), yet most are preventable. Therefore, control of oral and pharyngeal cancer is an important public health goal of these State Health Departments. These improved data will better meet the State's own legal mandate of cancer surveillance as part of the State public health infrastructure, and assist in the planning and evaluation of oral and pharyngeal cancer control efforts.

While cancer registries routinely receive pathology reports of tumor diagnoses, it is possible that for some cases of oral and pharyngeal cancer, the pathology specimens are sent to special pathology labs associated with dental schools, or to out-of-state laboratories. To ascertain these under-utilized pathology reporting sources, a simple survey will be sent to dental health providers (mostly dentists and oral surgeons). All such providers will be surveyed in West Virginia, while a sample of providers will be surveyed in South Carolina. The survey will ask if oral cancer screening is performed in the practice, if suspicious lesions are biopsied in the practice, and if not, to which specialists are referrals made. If the practice performs biopsies of oral lesions, the name and address of the pathology laboratory will be requested. These laboratories will be informed of their responsibility to report newly diagnosed tumors to the State Central Cancer Registry. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden of response (in hours)	Total burden (in hours)
Dentist and Oral Surgeons	1600	1	12/60	320
Total	.....	.....	.....	320

Dated: March 18, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7277 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–19–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Reactions to Canadian-style Cigarette Warning Labels—NEW—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC), proposes to conduct a national survey of young persons to assess their attitudes towards larger and more graphic cigarette warning labels, such as those currently used in Canada. Although the

purpose of cigarette warning labels is to alert consumers about the health hazards of smoking, research suggests that current U.S. warnings fail to get the attention of smokers, an important first step if warnings are to have any deterrent effect. Cigarette warning labels have not changed since 1984 in the United States.

The proposed study will be conducted through implementation of a web-based survey. We propose to administer a 10 minute survey to 2000 persons 18 to 24 years of age. The survey will include images of Canadian cigarette packs with their current warning labels and questions about reactions to these warnings, including acceptability, and perceived usefulness (perceived impact on starting to smoke or deciding to quit). The results of this study will be shared with policy makers and public health officials. The total burden for this data collection is 200 hours.

Respondents	Number of respondents	Responses/respondent	Avg. burden per Response (in hrs)
Persons 18–24 years old	1200	1	10/60

Dated: March 19, 2002.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–7275 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143; Correction

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Centers for Disease Control and Prevention, published a document in the **Federal Register**, March 19, 2002, (67 FR 12570), concerning Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Preliminary Investigation of Health Effects of Occupational Exposures in Paducah Gaseous Diffusion Plant Workers, Program Announcement OH–99–143. The meeting time has changed.

CONTACT PERSON FOR MORE INFORMATION: Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, M/S R–6, Cincinnati, Ohio 45226, telephone 513–841–4560.

Correction: In the **Federal Register** of March 19, 2002, (Volume 67, Number 53) [Notices] Page 12570, correct the ''Times and Dates'' to read:

Times and Dates:

2 p.m.–2:15 p.m., April 2, 2002 (Open)

2:20 p.m.–4 p.m., April 2, 2002 (Closed)

The meeting place, status, and purpose, announced in the original notice remain unchanged.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 21, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–7317 Filed 3–26–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0458]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 26, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review (OMB Control No. 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrates a potential to address an unmet medical need. Under section 112(b) of FDAMA, FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving collections of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and

premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package which may include additional information supporting a request to participate in certain fast track programs. As with the request for fast track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. The discussion of such information in a premeeting package may be summarized if it has already been previously submitted to FDA under an OMB approved collection of information. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB Control No. 0910–0014, expires September 30, 2002); 356h (OMB Control No. 0910–0338, expires March 31, 2003); and 3397 (OMB Control No. 0910–0297, expires February 29, 2004).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 45. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period of 1998 to 2000. For these 3 years, CBER and CDER together received a yearly average of 53 requests from 45 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document. Not all requests for fast track designation may meet the statutory standard. Of the average 53 requests made per year, the agency granted 33 requests for fast track designation. For each of the 33 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that a premeeting package needs more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document. The hour burden estimates contained in table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

In the **Federal Register** of October 23, 2001 (66 FR 53612), FDA published a 60-day notice requesting public comment on the information collection provisions (the October 2001 notice). One letter of comment was received in response to the 60-day notice on the information collection.

The comment declared, without any explanation or supporting information, that the proposed collection of information was unnecessary. The comment also attempted to reserve judgment as to whether our estimated information collection burden was accurate. The comment seemed to object to fast track drug development programs and stated in part that ''for our Congress to even think about letting it happen is playing games with the existing laws.''

FDA disagrees with the comment. Section 506 of the act requires sponsors to submit sufficient clinical data for FDA to determine, after preliminary evaluation, whether a fast track product may be effective. To obtain that clinical data as described in the guidance document, FDA must have an approved collection of information. Failure to obtain OMB approval for the proposed collection of information would undermine the guidance document's value (because FDA might not receive information that would help the review or receive unnecessary or confusing information) and ultimately undermine the efficiency of the review under a fast track drug development program.

Additionally, the October 2001 notice provided sufficient information and opportunity for public comment on the information collection burden estimates given in the notice. The comment received did not provide any figures or explanations that would cause us to change our burden estimates, so FDA has no reason to revise the collection burden estimates.

As for the comment's remarks regarding fast track drug development programs and Congress, such matters are outside the scope of this notice. We do, however, regard the statute as providing sufficient safeguards to

prevent unsafe or ineffective drugs from reaching the public.

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation request	45	1.18	53	60	3,180
Premeeting packages	33	1.00	33	100	3,300
Total					6,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7375 Filed 3–26–02; 8:45 am]

BILLING CODE 4160–01–S

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 Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: April 24–26, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., NW., Washington, DC 20007.

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(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: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7266 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of 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 a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 9, 2002.

Open: 8:30 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

Information is also available on the Institute's/Center's home page: www.nhlbi.nih.gov/meetings/index.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7269 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(60), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with

the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Richard D. Crosland, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, Ninds/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 2, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

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: National Institute of Neurological and Stroke Special Emphasis Panel.

Date: April 24, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7264 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 10, 2002.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6001 Executive Blvd. Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7271 Filed 3–26–02; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 86.

Date: April 11, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

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: National Institute of Environmental Health Sciences Special Emphasis Panel, SBIR Topic 87.

Date: April 29, 2002.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, BS, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, Research Triangle Park, NC 27709, 919/541–0752.

(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: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7272 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis, Panel.

Date: April 11–12, 2002.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Tommy L. Broadwater, Chief, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building/MSC 6500, 45 Center Drive, Room 5AS–25U, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7273 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 2 p.m. to March 27, 2002, 3 p.m., NIH, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 1, 2002, from 4 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7265 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: March 28, 2002.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabhe L. Atreya, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

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: April 1, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@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: April 2, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Call).

Contact Person: Richard Panniers, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

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: April 2, 2002.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@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: April 3, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey W. Elias, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@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: April 5, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The River In, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

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: April 8, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

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: April 9–10, 2002.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2002.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265 *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 11, 2002.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

(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: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7267 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 27, 2002, 4:30 p.m. to March 27, 2002, 5 p.m., NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on March 18, 2002, 67 FR 12034–12036.

The meeting will be held April 2, 2002, from 12 p.m. to 1 p.m. The location remains the same. The meeting is closed to the public.

Dated: March 20, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7268 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: April 1, 2002.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@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: April 2–3, 2002.

Agenda: To review and evaluate grant applications.

Time: 8:30 a.m. to 4 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Clare K. Schmitt, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148, *schmittc@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: April 2, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *poltisa@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: April 2, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

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: April 3, 2002.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

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: April 4, 2002.

Time: 2:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed Husin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@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: April 7–9, 2002.
Time: 4 p.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Argonne Guest House, Argonne National Laboratory, 9700 South Cass Avenue—Building 460, Argonne, IL 60439.
Contact Person: Arnold Revzin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, (301) 435–1153.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 10, 2002.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, Scientific Review Administrator, Center for Scientific Review, National Institues of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gordon L. Johnson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.
Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SEP.
Date: April 11, 2002.
Time: 10 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.
Contact Person: J. Terrell Hoffeld, DDS, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2002.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MS 7844, Bethesda, MD 20892, (301) 435–1018.

(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: March 19, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–7270 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 21406, April 30, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the Office of Equal Opportunity, Office of the Director, NIH, as follows: (1) Retitle the Office of Equal Opportunity (NAD, formerly HNAD) as the Office of Equal Opportunity and Diversity Management and revise the functional statement; (2) retitle the Complaints Management and Adjudication Branch (NAD2, fomerly HNAD2) as the Division of Complaints Management and Resolution and revise the functional statement; (3) establish the Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5), and transfer into this division the functions of the Affirmative Employment and Programs Branch (NAD3, formerly HNAD3) and the Program Planning and Evaluation Branch (NAD4, formerly HNAD4); and (4) abolish the Affirmative Employment and Programs Branch (NAD3) and the Program Planning and Evaluation Branch (NAD4).

Section N–B, Organization and Functions, is amended by replacing the current section NAD (formerly HNAD) with the following:

Office of Equal Opportunity and Diversity Management (NAD, formerly HNAD). Serves as the focal point for NIH-wide policy formulation, implementation, coordination and management of the civil rights, equal opportunity, affirmative employment, and workforce diversity programs of the NIH. Specifically, NAD (1) advises the NIH director and staff, as well as Institute and Center (IC) staff, on matters related to the equal employment opportunity (EEO) programs and policies of the NIH; (2) provides leadership on policy development and implementation in all areas of EEO to include diversity management, affirmative action planning, and complaints management; (3) consults with and provides advice and guidance to responsible NIH officials regarding the progress of the EEO programs within their respective organizations; (4) oversees the implementation of Title VI of the Civil Rights Act as it relates to research contractors and grantees, and reports its progress to the NIH Director; (5) provides leadership in the overall management of the discrimination and complaints process for all NIH employees or applicants in all pay plans to ensure fair and judicious treatment of all parties involved; (6) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action plans and Workforce Diversity initiatives; (7) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (8) represents the NIH Director in contacts with groups, both within and outside NIH, and maintains liaison with other Federal agencies regarding EEO issues; (9) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Department of Justice, United States Commission on Civil Rights, DHHS Office of Civil Rights and the DHHS Office of the General Counsel regarding NIH EEO programs (10) prepares responses to Congressional, internal, external, and other inquiries on issues relating to NIH EEO programs and policies; (11) performs studies and analyses, as necessary, and provides related advice and guidance to NIH program managers in support of the EEO programs at NIH; and (12) conducts evaluations of EEO programs for NIH

components and ensures compliance with all applicable laws and regulations.

Division of Complaints Management and Resolution (NAD2, formerly HNAD2). Provides leadership in the overall management of the discrimination complaints process for all NIH employees or applicants in all pay plans. Specifically, NAD2 (1) manages and provides oversight for NIH complaints processing; (2) manages the formal complaints process for all NIH components, conducts investigations, reviews and analyzes investigative files, prepares proposed dispositions, (including addressing management problems identified in the investigations), presents recommendations for corrective action, identifies those complaints recommended for settlement, and prepares appropriate documents; (3) monitors and reviews the Commissioned Corps complaint management system to ensure proper processing of complaints; (4) monitors discrimination complaints at the NIH level to identify patterns of discrimination, as well as conducts data analysis on trends in filing and resolution of similar complaints; (5) prepares responses to Congressional or other requests and inquiries on EEO complaints; (6) provides leadership in policy development or changes to current NIH policies and procedures in the area of the discrimination complaints process and resolution; (7) represents the Director, Office of Equal Opportunity and Diversity Management (OEODM), at all internal and external meetings related to complaints processing and adjudication; and (8) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department and the DHHS Office of the General Counsel.

Division of Diversity Policy, Planning and Evaluation (NAD5, formerly HNAD5). Provides leadership in the overall management of all areas related to diversity management and affirmative action as well as compliance with all EEO related requirements and evaluation of EEO and diversity programs throughout the NIH. Specifically, NAD5 (1) serves as consultant to senior NIH management officials as well as IC program officials in all areas of equal opportunity, civil rights, affirmative action, and diversity management; (2) provides advice and guidance to responsible NIH management officials on developing and implementing their Affirmative Action Plans and Workplace Diversity initiatives; (3) identifies training and educational needs in the areas of affirmative employment and diversity management and assesses the effectiveness of training activities; (4) in collaboration with the OIR, OEO and OHRM, develops NIH-wide policies and initiatives to eliminate barriers to equal employment opportunity and the effective management of diversity, which includes all job categories and segments of the work force; (5) ensures that all laws, regulations, executive orders, procedure and policies governing equal opportunity, civil rights, affirmative action, and diversity management are promulgated throughout the NIH; (6) provides leadership to the ICs and coordinates recruitment, placement and retention programs and strategies for underrepresented groups by promoting EEO and diversity awareness for all members of the NIH workforce; (7) in conjunction with the Office of Human Resource Management (OHRM) and the ICs, conducts community outreach activities to increase minority representation in new hires and career opportunities; (8) examines organizational personnel policies and practices to identify and eliminate barriers to full participation of all EEO groups in NIH employment opportunities; (9) provides advice and guidance to sponsoring ICs in the planning and presentation of annual NIH cultural observances and EEO educational seminars or programs; (10) develops criteria and conducts EEO and diversity program evaluations for NIH components; (11) develops and utilizes statistical research methods for the collection and analysis of data on various aspects of EEO to include new or modified methods to analyze workforce profiles, manpower distributions, and overall EEO effectiveness, and prepares and issues statistical reports on these projects; (12) handles EEO data requests from external and internal organizations, OEODM assessments and reports required by higher level authorities, as well as responses to Congressional and other inquires on affirmative action and diversity management; and (13) serves as the NIH focal point for coordinating administrative matters relating to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Justice Department, and the DHHS Office of the General Counsel regarding the NIH affirmative action and diversity management programs.

Delegations of authority statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: March 8, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7274 Filed 3–26–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for a Permit

SUMMARY: On February 12, 2002, Circo Hermanos Suarez, S.A., applied for a permit to re-export polar bears under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We are publishing this notice due to the high level of interest expressed by the public and members of Congress.

DATES: We have been and continue to receive information from numerous sources related to the status and condition of the bears, and their possible re-export. Our determination regarding the issuance of this permit will be based on all substantive information available to us. However, we anticipate that the review and processing of this application will require at least 45–60 days. Therefore, we will not be able to make a determination on this application until April 26, 2002, and will consider any additional information received by this date.

ADDRESSES: As with all applications received, documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281. Please refer to the PRT number when requesting a copy of the documents.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Circo Hermanos Suarez, S.A., PRT–053440 requests a CITES certificate for the re-export of 5 male and 2 female polar bears (*Ursus maritimus*) from Puerto Rico to the Netherlands Antilles.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: February 26, 2002.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7315 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by April 26, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Thomas J. Moore, III, Ingram, TX, PRT–803337.

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export, and cull of excess male barasingha (*Cervus duvauceli*) from his captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a period of three years. Permittee must apply for renewal annually.

Applicant: University of New Mexico/Depart. of Anthropology, Albuquerque, NM, PRT–013176.

The applicant requests renewal of a permit to authorize the import of biological samples from wild, captive-held, and captive-born chimpanzees (*Pan troglodytes*), pygmy chimpanzees (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) from various countries for the purpose of scientific research. This notification covers activities conducted by the applicant over a period of five years.

Applicant: National Aviary, Pittsburgh, PA, PRT–053886.

The applicant requests a permit to export viable eggs of captive-bred Manchurian cranes (*Grus japonensis*) and white-naped cranes (*Grus vipio*) to the Khinganski Nature Reserve, Arkara, Russia for the purpose of enhancement of the survival of the species through captive breeding and re-introduction to the wild. As this request for a permit is part of an ongoing program, this application file will be established as a master file from which a permit will be issued for this year's export, and as the basis for which permits can be issued for similar activities to be conducted by the applicant over the next 5 years.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 15, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–7316 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance; Endangered Species

On March 6, 2002, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–053151) to the Centers for Disease Control/National Center for Infectious Diseases, Atlanta, Georgia, to import biological samples collected post-mortem from one captive-born female Sumatran orangutan (*Pongo pygmaeus abelii*), and two male and one female captive-held/captive-born Bornean orangutan (*Pongo pygmaeus pygmaeus*) from the Singapore Zoological Gardens, Singapore. The 30-day comment period required by Section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the health and life of the remaining Singapore Zoo population of 26 orangutans existed, and that no reasonable alternative was available to the applicant for several reasons.

The Centers for Disease Control (CDC) received a request from the Agricultural and Veterinary Authority of Singapore for assistance in determining the cause of death of two Bornean orangutans that died unexpectedly at the Singapore Zoological Gardens on January 20th and 21st, 2002. The request asked for assistance in determining whether the cause of death of these specimens was infectious in nature. The Singapore Authorities wanted to rule out two possible viral infections, Coxsackievirus B and encephalomyelitis virus (EMCV). They do not have the capability to conduct these same tests in Singapore. The Singapore Zoo also experienced two deaths of orangutans at their facility prior to the recent loss of these specimens. Tissue samples from all four specimens are being imported to determine whether the cause of death may be from the same disease vector.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: March 15, 2002.

Timothy J. Van Norman,

Chief, Branch of Permits (International), Division of Management Authority.

[FR Doc. 02–7314 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Twelfth Regular Meeting; Public Meeting; Observer Information

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), may submit proposed resolutions, decisions, and agenda items for consideration at meetings of the Conference of the Parties to CITES. The United States may also propose amendments to the CITES Appendices for consideration at meetings of the Conference of the Parties. The twelfth regular meeting of the Conference of the Parties to CITES (COP12) will be held in Santiago, Chile, November 3–15, 2002.

With this notice we:

Announce a public meeting to discuss proposed amendments to the CITES Appendices (species proposals), resolutions, decisions, and agenda items that the United States is considering submitting for consideration at COP12; and

Provide information on how non-governmental organizations based in the United States can attend COP12 as observers.

DATES: The public meeting will be held on April 17, 2002, at 1:30 p.m. We will consider written information and comments you submit concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12, and other items relating to COP12, if we receive them by May 17, 2002.

ADDRESSES:

Public Meeting

The public meeting will be held in Sidney Yates Auditorium, in the Department of the Interior at 18th and C Streets, N.W., Washington, D.C. Directions to the building can be obtained by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT,** below).

Available Information

Information concerning potential species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting for consideration at COP12 is available upon request from the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203. Effective April 1, 2002, this information will also be available from our World Wide Web site *(http://international.fws.gov/cites/cites.html)* and via our Faxback system. You may obtain the information via the Faxback system by dialing 703/358–2400, our Faxback telephone number, following the automated instructions, and entering Document Number 5054 when prompted to enter a document number.

Comment Submission

Comments pertaining to proposed resolutions, proposed decisions, and/or agenda items should be sent to the Division of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203, or via E-mail at: fw9 cites@fws.gov, or via fax at: 703/358–2298. Comments pertaining to species proposals should be sent to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, VA 22203, or via e-mail at: fw9 scientific authority@fws.gov, or via fax at: 703/358–2276. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at either the Division of Management Authority or the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Andrea Gaski, Division of Management Authority, Branch of CITES Operations, phone: 703/358–2095, fax: 703/358–2298, E-mail: fw9 cites@fws.gov; or Robert R. Gabel, Division of Scientific Authority, phone: 703/358–1708, fax: 703/358–2276, E-mail: fw9 scientific authority@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction if their trade is not controlled. These species are listed in Appendices to CITES, copies of which are available from the Division of Management Authority or the Division of Scientific Authority at the above addresses, from our World Wide Web site at *http://international.fws.gov/cites/cites.html*, or from the official CITES Secretariat Website at *http://www.cites.org/eng/append/index.shtml*. Currently, 157 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the other Parties.

This is our third in a series of **Federal Register** notices that provide you with an opportunity to participate in the development of the United States' negotiating positions for the twelfth regular meeting of the Conference of the Parties to CITES (COP12). We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority at the above address. We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority at the above address. You may locate our regulations governing this public process in 50 CFR 23.31–23.39.

COP12 is scheduled to be held in Santiago, Chile, November 3–15, 2002.

Announcement of Public Meeting

We announce that we will hold a public meeting to discuss with you species proposals, proposed resolutions, proposed decisions, and agenda items

that the United States is considering submitting for consideration at COP12. The public meeting will be held on April 17, 2002, from 1:30 p.m. to 4:30 p.m. in Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. You can obtain directions to the building by contacting the Division of Management Authority (see **FOR FURTHER INFORMATION CONTACT**, above). Sidney Yates Auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible. All persons planning to attend the meeting will be required to present photo identification when entering the building.

Observers

Article XI, paragraph 7 of CITES states the following:

''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.''

Persons wishing to be observers representing international non-governmental organizations (which must have offices in more than one country) at COP12 may request approval directly from the CITES Secretariat. Persons wishing to be observers representing U.S. national non-governmental organizations at COP12 must receive prior approval from our Division of Management Authority. Once we grant our approval, a U.S. national non-governmental organization is eligible to register with the Secretariat and must do so at least one month prior to the opening of COP12 to participate in COP12 as an observer. Individuals who are not affiliated with an organization may not register as observers. An international non-governmental organization with at least one office in the United States may register as a U.S. non-governmental organization if it prefers.

A request submitted to us for approval as an observer should include evidence of technical qualifications in protection, conservation, or management of wild fauna and/or flora, on the part of both the organization and the individual representative(s). The request should also include copies of the organization's charter and/or bylaws, and a list of representatives it intends to send to COP12. An organization that we have previously approved as an observer at a meeting of the Conference of the Parties within the past five years must submit a request but does not need to provide as much detailed information concerning its qualifications as an organization seeking approval for the first time. Organizations seeking approval for the first time should detail their experience in the protection, conservation, or management of wild fauna and/or flora, as well as their purposes for wishing to participate in COP12 as an observer. These requests should be sent to the Division of Management Authority (*see* **ADDRESSES**, above).

Once we approve an organization as an observer, we will send the organization instructions for registration with the CITES Secretariat in Switzerland, including a meeting registration form and relevant travel and hotel information. Any organization requesting approval for observer status at COP12 will be added to our CITES Mailing List if it is not already included, and will receive notice of all future **Federal Register** notices and other information pertaining to COP12. A list of organizations approved for observer status at COP12 will be available upon request from the Division of Management Authority just prior to the start of COP12. The deadline for registration of an organization as an observer at COP12 is one month prior to the opening of the COP.

Future Actions

The United States must submit any species proposals, proposed resolutions, proposed decisions, and agenda items for consideration at COP12, to the CITES Secretariat 150 days prior to the start of the meeting (i.e., by June 6, 2002). We are planning to soon publish a **Federal Register** notice announcing species proposals, proposed resolutions, proposed decisions, and agenda items that the United States is considering submitting to COP12, and soliciting further information and comments on them. We will consider all available information and comments, including those presented at the public meeting (see **DATES** above) or received in writing during the comment period, in deciding which species proposals, proposed resolutions, proposed decisions, and agenda items warrant submission by the United States for consideration of the Parties. Those we decide to submit for consideration at COP12 will be submitted to the CITES Secretariat by June 6, 2002.

We expect the CITES Secretariat to provide us with a provisional agenda for COP12 within the next several months. Once we receive the provisional agenda, we will publish it in a **Federal Register** notice. We will also plan to provide it through our Website, if it is available.

Approximately four months prior to COP12, we plan to announce those species proposals, proposed resolutions, proposed decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at COP12 by posting a notice on our Website, if it is available.

Through a **Federal Register** notice approximately two months prior to COP12, we will publish the provisional agenda for COP12 and inform you about proposed U.S. negotiating positions on proposals to amend the Appendices, draft resolutions, draft decisions, discussion papers, and other issues before the Parties for consideration at COP12. We will also publish an announcement of a public meeting that we expect to hold approximately 30 to 45 days prior to COP12, to receive public input on our positions regarding COP12 issues.

Prior to COP12, we plan to post on our Website (if it is available) any changes the United States makes to its proposed negotiating positions contained in the **Federal Register** notice referred to in the above paragraph.

Authority: The primary author of this notice is Mark Albert, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 12, 2002.

Steve Williams,

Director.

[FR Doc. 02–7313 Filed 3–26–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Digital Subscriber Line Forum

Notice is hereby given that, on February 5, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993,

15 U.S.C. 4301 *et seq.* (''the Act''), The Digital Subscriber Line Forum (''DSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, US Robotics, Schaumburg, IL, and Uniden America Corporation, Fort Worth, TX, have been added as parties to this venture. Also, Mitel Semiconductor is now called Mitel Networks, Ottawa, Ontario, Canada.

In addition, Globespan and Virata Ltd. have merged to become GlobespanVirata, cambridge, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, DSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on October 9, 2001. A notice for this filing has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7281 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Nanometer Scale Patterning for Terabyte Capacity Disk Drives

Notice is hereby given that, on February 28, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Nanometer Scale Patterning for Terabyte Capacity Disk Drives has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are GE Corporate Research and Development, Niskayuna, NY; Imation Corporation, Oakdale, MN; and IBM Corporation, Almaden Research Center, San Jose, CA. The nature and objectives of the venture are to develop and demonstrate ''Nanometer Scale Patterning for Terabyte Capacity Disk Drives''.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7286 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management Service Providers Association, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Management Service Providers Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intellinet Corporation, Richmond Heights, OH and Situs Management Inc., Tokyo, JAPAN have been added as parties to this venture. Also, the following are no longer members: 2nd Wave Inc., Dallas, TX; Access360, Irvine, CA; AdventNet Inc., Pleasanton, CA; Altaworks Corporation, Nashua, NH; Aptegrity Inc., Fairfield, NJ; Arsenal Digital Solutions, Durham, NC; Arula Systems Inc., Cupertino, CA; Avasta Inc., San Francisco, CA; AVCOM, Sunnyvale, CA; Candle Corporation, El Segundo, CA; Center 7 Inc., Lindon, UT; Check Point Software Technologies Ltd., Redwood City, CA; Crystal Group Inc., Hiawatha, IA; DefendNet Solutions Inc., Providence, RI; developNET Corporation, Portland, OR; Digital Fuel Technologies Inc., Redwood City, CA; Dimension Data McLean, VA; Dirig Software, Nashua, NH; e4e Inc., Santa Clara, CA; EasyVista.com, Beverly, MA; Entuity, New York, NY; Envive Corporation, Mountain View, CA; esavio, Berwyn PA; Euclid Network Solutins Inc., Santa Clara, CA; FusionStrorm, San Francisco, CA; Gomez Networks, Lincoln, MA; Guardent Inc., Waltham, MA; ISManaged Inc., Plano, TX; Keynote Systems Inc., San Mateo, CA; Kinetica Pty. Ltd., Pymble, New South Wales, AUSTRALIA; Logical Worldwide, Slough, UNITED KINGDOM; Luminate Inc., Redwood City, CA; ManagedStorage International Inc., Broomfield, CO; Marimba Inc., Mountain View, CA; N-able Technologies, Ottowa, Ontario, CANADA, NCMX Inc., Seattle, WA; NEXL Inc., Peabody MA; NOCpulse Inc., Sunnyvale, CA; Objective Systems Integrators, Folsom, CA; Oblicore Inc., Ramat Gan, ISRAEL; OMRON ALPHATEC Corporation, Tokyo, JAPAN; Opticom Inc., Andover, MA; PatchLink.com Corporation, Scottsdale, AZ; Precise Software Systems Ltd., Westwood, MA; Qualys Inc., Redwood City, CA; Raymond James & Associates, St. Petersburg, FL; Selis Networks Inc., San Francisco, CA; SilverBack Technologies, Billerica, MA; StorageWay Inc., Fremont, CA; Symantec Corporation, Cupertino, CA; TEKsystems Internet Business Services LLC, Beaverton, OR; and Trend Micro Inc., Cupertino, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Management Service Providers Association, Inc. intends to file additional written notification disclosing all changes in membership.

On October 20, 2000, Management Service Providers Association, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 24, 2000 (65 FR 70613).

The last notification was filed with the Department on November 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 2002 (67 FR 5292).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 02–7282 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 11, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Test Methods, Camberley, Surrey, UNITED KINGDOM; Datappli, Midland, MI; Data Patterns, West Mambalam, Chennai, INDIA; GTE–ERS, Ontario, CA; SBS Greenspring Computers, Newark, CA; Shaanxi Hitech, Xi'an, PEOPLE'S REPUBLIC OF CHINA; and Vero/APW Electronics, Southhampton, Hampshire, UNITED KINGDOM have been dropped as parties to this venture.

No other changes have been made in either the membership of planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department of August 20, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 25, 2001 (66 FR 49042).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7283 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 13, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ines GmbH, Leibnizstrasse, Bad Breisig, Germany has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on February 11, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7284 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spray Drift Task Force

Notice is hereby given that, on February 26, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nissan Chemical Industries, Ltd., Tokyo, Japan has been added as a party to this venture. Also, Micro-Flo Company, Memphis, TN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. membership in this group research project remains open, and Spray Drift Task Force intends to file additional written notification disclosing all changes in membership.

On May 15, 1990, Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 5, 1990 (55 FR 27701).

The last notification was filed with the Department on January 28, 2002. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–7285 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Notice of Registration

By Notice dated September 24, 2001, and published in the **Federal Register** on October 3, 2001 (66 FR 50454), Roche Diagnostics Corporation, ATTN: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of alphamethadol (9605) a basic class of controlled substance listed in Schedule I.

Roche Diagnostics Corporation plans to manufacture small quantities of the above listed controlled substance for incorporation in drug of abuse detection kits.

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 Roche Diagnostics Corporation, is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Corporation 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 class of controlled substance listed above is granted.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–7259 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 5, 2001, and published in the **Federal Register** on October 17, 2001, (66 FR 52782), Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

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 Stepan Company, Natural Products Department to import coca leaves is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Stepan Company, Natural Products Department on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation 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 section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 18, 2002.

Laura M. Nagel,

Deputy Assistance Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 02–7260 Filed 3–26–02; 8:45 am]

BILLING CODE 4410–04–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 36—Licenses and Radiation Safety Requirements for Large Irradiators.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion. It is estimated that there are approximately 3 NRC and 7 Agreement State reports submitted annually.

5. *Who will be required or asked to report:* Irradiator licensees licensed by NRC or an Agreement State.

6. *An estimate of the number of responses:* 87 (3 NRC licensee + 7 Agreement State licensee responses + 77 recordkeepers).

7. *The estimated number of annual respondents:* 77 (22 NRC licensees and 55 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 35,975 (10,277 hours for NRC licensees [10,087 recordkeeping + 190 reporting] and 25,698 hours for Agreement State licensees [25,218 recordkeeping + 480 reporting]) or 467 hours per licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 36 contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials for a variety of purposes in research, industry, and other fields. The subparts cover specific requirements for obtaining a license or license exemption, design and performance criteria for irradiators; and radiation safety requirements for operating irradiators, including requirements for operator training, written operating and emergency procedures, personnel monitoring, radiation surveys, inspection, and maintenance. Part 36 also contains the recordkeeping and reporting requirements that are necessary to ensure that the irradiator is being safely operated so that it poses no danger to the health and safety of the general public and the irradiator employees.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC world wide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 26, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7324 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting; Decommissioning Criteria for the West Valley Demonstration Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting in West Valley, New York.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will hold a transcribed, facilitated meeting on April 17, 2002 with the public to discuss the Commission's policy statement on the clean up criteria for the West Valley site entitled, ''Decommissioning Criteria for the West Valley Demonstration Project at the West Valley Site.'' The meeting will also include a discussion of the perspectives, roles, and responsibilities of the NRC and other federal and state agencies involved at the West Valley site. The Department of Energy and New York State Energy Research and Development Authority will also participate.

DATE/TIME: The meeting will be held on Wednesday, April 17, 2002, from 7 p.m. through 10 p.m. The meeting will be preceded by an ''open house'' between 6 p.m. and 7 p.m to allow for individual discussions with staff members.

LOCATION: Ashford Office Complex, 9030 Route 219, West Valley, New York.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of General Council, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.* Mr. Cameron will facilitate the meeting.

SUPPLEMENTARY INFORMATION: Additional information can be obtained from the Web site, *http://www.access.gpo.gov/su_docs/fedreg/frcont02.html*, or by contacting Mr. Chad Glenn at (800) 368–5642, ext. 6722, or via e-mail at *cjg1@nrc.gov.* The policy statement was published in the **Federal Register** on February 1, 2002 (67 FR 5003). Those who wish to ask questions should register with Mr. Glenn prior to the meeting or at the Ashford Office Complex, 9030 Route 219, West Valley, New York meeting site 15 minutes prior to the start of the meeting. Individual oral questions may be limited by the time available, depending on the number of persons who register. Copies of the information on the policy statement will also be available at the meeting. All attendees are requested to bring photo identification (*i.e.*, driver's license).

Dated at Rockville, Maryland this 21st day of March, 2002.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 02–7323 Filed 3–26–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on an Overview of Recent Activities Related to the Potential High-Level Waste Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Beatty, Tonopah, and Ely, Nevada.

SUMMARY: This is being reprinted to clarify dates, times and locations. The U.S. Nuclear Regulatory Commission (NRC) staff will hold three public meetings on regulation of a potential high-level waste repository at Yucca Mountain. The meetings are intended to foster a common understanding among the stakeholders on safety and regulatory issues, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, NRC.

The meetings are primarily to acquaint the public with the NRC oversight of a potential high-level waste repository at Yucca Mountain. It will begin with an overview of NRC's responsibilities, include a discussion of NRC's regulations and preparations for evaluating a potential U.S. Department of Energy (DOE) license application, and conclude with an overview of the NRC's role with respect to the transportation of high-level waste. Several opportunities for questions will be provided. In addition, members of the NRC staff will be available for informal discussion with members of the public. The dates, times, and locations of the public meetings are shown below.

Date/Time: Monday, April 8, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Beatty Senior Center, 150 A Avenue South, Beatty, Nevada.

Date/Time: Tuesday, April 9, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Tonopah Convention Center, 301 West Brougher Avenue, Tonopah, Nevada.

Date/Time: Wednesday, April 10, 2002, from 6:30 p.m.–9 p.m. (Pacific time).

Place: Holiday Inn Prospector Inn & Casino, 1501 E. Aultman Street, Ely, Nevada.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by telephone: (301) 415–1642 or e-mail: *fxc@nrc.gov.*

Dated at Rockville, MD this 22nd day of March, 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–7322 Filed 3–26–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25468; 812–12446]

UTEK Corporation; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, UTEK Corporation (''UTEK''), requests an order approving its Non-Statutory Stock Option Plan (the ''2000 Plan'') and the grant of certain stock options under the 2000 Plan.

FILING DATES: The application was filed on February 13, 2001, and amended on January 3, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 202 South Wheeler Street, Plant City, FL 33566.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware corporation and an internally managed business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] UTEK's primary investment objective is to increase its net assets by exchanging stock in its portfolio companies for cash and other assets it will use to acquire additional technologies. UTEK seeks to achieve that investment objective by developing portfolio companies that identify, license and market new technologies invented primarily by employees of universities and laboratories. UTEK expects that the primary source of technology opportunities will be, as it has been in the past, presented to it as a result of contacts with universities research laboratories and in private industry, provided by its management, including its Non-Officer Directors as defined below.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the 2000 Plan for directors who are not employees or officers of the applicant (''Non-Officer Directors'').[2] Applicant has a seven-member board of directors (the ''Board''), five of whom are not interested persons of the applicant (''Disinterested Directors'').[3] On February 8, 2000, applicant's Board approved the 2000 Plan, and applicant's shareholders approved the 2000 Plan on October 2, 2000. The 2000 Plan will become effective on the date that the Commission issues an order on the application (the ''Order Date'').

3. The 2000 Plan provides for the grant of stock options to purchase shares of applicant's common stock (''Options'') to each of the Non-Officer Directors on the Order Date. The Non-Officer Directors will receive Options pursuant to the following formula: Options representing 25,000 Shares will be granted to four of the five Non-Officer Directors on the Order Date, with 6,250 Options for each grantee vested at the time of grant, and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years. One Non-Officer Director will be granted 50,000 Options, with 12,500 Options vested at the time of grant and an additional 12,500 Options vesting on each anniversary of the grant for three consecutive years. Any Non-Officer Director that is elected or appointed to the Board after the Order Date will receive Options representing 25,000 shares upon his or her election or appointment, with 6,250 Options vested at the time of grant and an additional 6,250 Options vesting on each anniversary of the grant for three consecutive years.

4. Under the 2000 Plan, the exercise price for Options will not be less than 100% of the current market value of the shares on the date of grant. Options granted under the 2000 Plan are exercisable for a period of 10 years from the date of grant or a shorter period as the Board may establish. In the event of death or permanent and total disability of an Non-Officer Director during the Director's service, unexercised Options will become exercisable only during the period of twelve months following the date of death or disability. In the event of the termination of a Non-Officer Director's directorship for a reason other than by death or permanent and total disability, an Option shall be held at the date of termination and may be exercisable in whole or in part for three months, or some lesser period not to be less than 30 days, as is provided for in the Option agreement. The Options will not be transferable except for disposition by gift, will, intestacy, or pursuant to a qualified domestic relations order (''QDRO'') as defined by section 414(p) of the Internal Revenue Code of 1986, as amended.[4]

5. Applicant states that, in addition to the 2000 Plan, UTEK also has in place another stock option plan, which was adopted by UTEK's stockholders in 1999 (the ''1999 Plan''). The 1999 Plan provides for the issuance of up to 500,000 options to purchase applicant's common stock. Non-Officer Directors are not eligible to receive options under the 1999 Plan. Applicant states that there is also an outstanding warrant to purchase up to 100,000 shares of UTEK's common stock held by Schneider Securities Inc., a registered broker-dealer. UTEK's outstanding options and warrant represent 471,600 shares or approximately 12% of its outstanding common stock as of September 30, 2001. UTEK does not have any other options, warrants or rights outstanding.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Non-Officer Directors currently receive no compensation for their services on the board of directors or committees, except for the reimbursement of out-of pocket expenses incurred in attending meetings.

[3] The Non-Officer Directors are Disinterested Directors.

[4] A QDRO is made pursuant to a court order or decree under state domestic relations laws (*e.g.*, involving divorce, child support, alimony, or marital property rights). Under section 414(p) of the Code, a QDRO permits a state domestic relations court to issue orders that will allow for employee plan benefits to be paid to an alternate payee.

result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the 2000 Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states that Non-Officer Directors not only provide UTEK with skills and experience necessary for management and oversight of UTEK's investments and operations and are likely to have specific experience with respect to technologies in which UTEK invests, but they are also considered an important source of technology investment opportunities. Applicant also states that Non-Officer Directors with industry or other relevant experience also are expected to participate on an ongoing basis in the analysis of prospective portfolio companies, as well as to provide managerial assistance to UTEK's portfolio companies and aid them in their business of researching, identifying, developing and licensing new technology. Applicant believes that its ability to make Option grants under the 2000 Plan to Non-Officer Directors provides a means of retaining the services of its current Non-Officer Directors and of attracting qualified persons to serve as Non-Officer Directors in the future. The Options also will provide a means for UTEK's Non-Officer Directors to increase their ownership interest in UTEK, thereby helping to ensure a close identification of their interests with those of UTEK and its shareholders. Applicant submits that the terms of the 2000 Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders and that the grant of Options to Non-Officer Directors will not have a substantial dilutive effect on the net asset value of UTEK's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7290 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25492; 812–12644]

Nationwide Life Insurance Company, et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies and unit investment trusts both within and outside the same group of investment companies.

Applicants: Nationwide Life Insurance Company (''NLIC''), Gartmore Mutual Funds (''GMF''), Gartmore Variable Insurance Trust (''GVIT''), Gartmore Mutual Fund Capital Trust (''GMFCT''), Gartmore Global Asset Management Trust (''GGAMT'') and Gartmore Morley Capital Management (''GMCM'' and, together with GMFCT and GGAMT, the ''Advisers'').

Filing Dates: The application was filed on September 12, 2001 and amended on March 21, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, One Nationwide Plaza, Columbus, OH 43215.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. GMF is an Ohio business trust registered under the Act as an open-end management investment company. GVIT is a Massachusetts business trust registered under the Act as an open-end management investment company. The Gartmore Investment Companies (as defined below) are comprised of separate series, each of which represents a separate portfolio of securities with its own investment objectives and policies. The term ''Gartmore Investment Companies'' refers to GMF and GVIT and any current or future registered open-end management investment companies that are part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G) of the Act) as GMF and GVIT.

2. NLIC is a stock life insurance company organized under the laws of the state of Ohio and a wholly owned subsidiary of Nationwide Financial Services, Inc. (''NFS''), a provider of diversified financial services.[1] NLIC issues variable insurance contracts, which offer opportunities to invest in the Gartmore Investment Companies through separate accounts registered under the Act (''Registered Separate Accounts'') and separate accounts exempt from registration under the Act (''Unregistered Separate Accounts'' and, together with the Registered Separate Accounts, the ''Separate Accounts''). The Gartmore Investment Companies, including the Funds of Funds (as defined below), serve, although not exclusively, as funding mediums for the Separate Accounts and may serve, in the future, as funding mediums for Separate Accounts sponsored by insurance companies other than NLIC.

3. Applicants request relief to permit certain series of GMF and GVIT that are advised by an Adviser (the ''Funds of Funds'') to invest (a) in other series of the Gartmore Investment Companies (''Affiliated Underlying Funds'') and (b) in other registered open-end management investment companies and unit investment trusts that are not part of the ''same group of investment companies'' as the Gartmore Investment

[1] For purposes of the requested relief, NLIC includes any entity controlling, controlled by, or under common control with NLIC.

Companies (''Unaffiliated Underlying Funds'' and, together with the Affiliated Underlying Funds, the ''Underlying Funds'').[2]

4. Each Fund of Funds may make investments in government securities, short-term fixed income securities and other securities that are not issued by registered investment companies and which are consistent with its investment objectives and in a fixed rate investment contract issued by NLIC (''Nationwide Contract''). Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program with just one investment and will provide a simple, convenient and cost-efficient program for investors who are able to identify their investment goals and risk tolerances but may not be comfortable deciding how to invest their assets to achieve those goals.

5. GMFCT, GGAMT, and GMCM are registered as investment advisers under the Investment Advisers Act of 1940. GMFCT serves as investment adviser to the Funds of Funds and certain other series of the Gartmore Investment Companies, including the GMF Index Funds. GMFCT is an indirect subsidiary of NFS. GGAMT serves as investment adviser to certain series of the Gartmore Investment Companies. GMCM serves as investment adviser to two series of GMF.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit Underlying Funds to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the control that a Fund of Funds may have over an Unaffiliated Underlying Fund, applicants propose a condition prohibiting the Advisers, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act.

5. To limit further the potential for undue influence by a Fund of Funds or its affiliates over an Unaffiliated Underlying Fund, applicants state that a Fund of Funds and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, a ''Fund of Funds Affiliate'') will not cause any investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or its investment adviser, sponsor, promoter, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, an ''Unaffiliated Fund Affiliate''). The board of trustees of the Fund of Funds (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), also will adopt procedures designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions. The board of each Unaffiliated Underlying Fund that is organized as an open-end management investment company (''Unaffiliated Fund''), including a majority of the Disinterested Trustees, also will determine that, among other things, any consideration paid by the Unaffiliated Fund to the Fund of Funds or a Fund of Funds Affiliate is fair and reasonable and does not involve overreaching on the part of any person concerned.

6. To avoid the possibility that a Fund of Funds or a Fund of Funds Affiliate could force an Unaffiliated Underlying Fund to purchase certain securities, applicants state that a Fund of Funds will not cause an Unaffiliated Underlying Fund to purchase a security from an underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each, an ''Underwriting Affiliate''). For the purpose of the requested relief, an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

7. Applicants further state that the board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures designed to monitor any purchases of securities by the Unaffiliated Fund in Affiliated Underwritings, including any purchases made directly from each Underwriting Affiliate, and will make certain findings to assess whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. An Unaffiliated Fund will keep certain records concerning these purchases.

8. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Unaffiliated Fund will execute an agreement (prior to an investment in the shares of the Unaffiliated Fund in excess of the limits of section 12(d)(1)(A)(i) of the Act) stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Underlying Fund may choose to reject an investment from a Fund of Funds.

[2] For purposes of the requested relief, Adviser includes any entity controlling, controlled by, or under common control with an Adviser.

9. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD''), if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD. Applicants represent that, with respect to an investment by a Registered Separate Account in a Fund of Funds, the aggregate of all fees and charges at all levels will be reasonable in relation to the services rendered, the expenses expected to be incurred and the risks assumed by the applicable parties.

10. In addition, applicants note that the Board of a Fund of Funds, including a majority of the Disinterested Trustees, would be required to determine that the advisory or management fees charged to the Fund of Funds are based on services provided that are in addition to, rather than duplicative of, services provided to Underlying Funds in which a Fund of Funds invest. Furthermore, an Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by a Fund of Funds in the Unaffiliated Underlying Fund.

11. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order. Applicants also represent that a Fund of Fund's prospectus and sales literature will contain clear, concise ''plain English'' disclosure designed to inform investors of the unique characteristics of the Fund of Funds' structure, including but not limited to, the expense structure and the additional expenses of investing in Underlying Funds.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company or an affiliated person of such person. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among others: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Underlying Funds may be deemed to be under common control by virtue of having the same Adviser. Additionally, applicants state that a Fund of Funds and an Unaffiliated Underlying Fund may become affiliated persons if a Fund of Funds acquires more than 5% of the Unaffiliated Underlying Fund's outstanding voting securities. Applicants also state that GMFCT may be deemed an affiliated person of NLIC, the issuer of the Nationwide Contract, as they are both under the common control of NFS. The Funds of Funds, through their affiliation with NFS, may therefore be deemed affiliated persons of NLIC. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds and purchasing the Nationwide Contract from NLIC.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the investment by a Fund of Funds in shares of the Underlying Funds and the Nationwide Contract and the issuance of shares of the Underlying Funds to a Fund of Funds will be effected in accordance with the investment policies contained in the registration statement of such Fund of Funds. In addition, the Fund of Funds will pay no sales load when purchasing the Nationwide Contract, and the guaranteed rate on the Nationwide Contract will be at least as favorable as the guaranteed rate on all other similar fixed contracts issued by NLIC. Furthermore, each Fund of Funds will be permitted to remove its assets from the Nationwide Contract at any time without the imposition of a sales charge or market value adjustment.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisers, (b) any person controlling, controlled by, or under common control with the Advisers, and (c) any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act advised or sponsored by the Advisers or any person controlling, controlled by, or under common control with an Adviser (the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Underlying Fund, then the Group (except for any member of the Group that is a Separate Account) will vote its shares of the Unaffiliated Underlying Fund in the same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (i) vote its shares of the Unaffiliated Underlying Fund in the

same proportion as the vote of all other holders of the Unaffiliated Underlying Fund's shares; or (ii) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received.

2. A Fund of Funds and a Fund of Funds Affiliate will not cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Underlying Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Underlying Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of 12(d)(1)(A)(i) of the Act, the board of each such Unaffiliated Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Unaffiliated Fund to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Fund of Funds or Fund of Funds Affiliate will cause an Unaffiliated Underlying Fund to purchase a security from an Underwriting Affiliate.

6. The board of an Unaffiliated Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Unaffiliated Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board of the Unaffiliated Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The board of the Unaffiliated Fund should consider, among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interest of shareholders.

7. The Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase made once an investment by a Fund of Funds in the securities of an Unaffiliated Fund exceeds the limits of Section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that the Unaffiliated Fund understand the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limits in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund of Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any investment advisory or management contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Disinterested Trustees, must find that the advisory or management fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, the services provided to Underlying Funds in which the Fund of Funds will invest. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund of Funds.

10. An Adviser to a Fund of Funds will waive or offset fees otherwise payable to the Adviser by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Unaffiliated Fund under rule 12b–1 under the Act) received by the Adviser or an affiliated person of the Adviser from an Unaffiliated Underlying Fund in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in rule 2830 of the Conduct Rules of the NASD, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds set forth in rule 2830 of the Conduct Rules of the NASD.

12. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the act, except to the extent that such Underlying Fund (i) receives securities of another investment company as a dividend or as a result of a plan of

reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (ii) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (a) acquire securities of one more affiliated investment companies for short-term cash management purposes, or (b) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7325 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–25493; 812–12650]

First American Investment Funds, Inc., et al.; Notice of Application

March 21, 2002.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the ''Act'') under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act, (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act, (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility. The requested order would also amend a condition of a prior order (''Order'').[1]

Applicants: First American Investment Funds, Inc. (''FAIF''), First American Funds, Inc. (''FAF''), First American Strategy Funds, Inc. (''FASF''), First American Insurance Portfolios, Inc. (collectively, the ''Investment Companies''), U.S. Bancorp Asset Management, Inc. (''USBAM'') and all other open-end registered management investment companies and their series that now or in the future are advised by USBAM or a person controlling, controlled by, or under common control with USBAM (together with the Investment Companies, the ''Funds'').[2]

Filing Dates: On September 28, 2001 and amended on March 19, 2002.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James D. Alt, Esq., 601 Second Avenue South, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: Julia Kim Gilmer, Senior Counsel, at (202) 942–0528, or Janet M. Grossnickle, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Investment Company is registered under the Act as an open-end management investment company and is organized as a Maryland or a Minnesota corporation. USBAM is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. The Funds have obtained an order permitting each Fund to use its uninvested cash to purchase shares of one or more affiliated money market funds that comply with rule 2a–7 of the Act (the ''Money Market Funds.'').[3] The Funds have also obtained an order permitting the Funds to invest cash on a joint basis through joint accounts (''Joint Accounts'').[4]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or by investing in other short-term instruments either directly or through Joint Accounts. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a fund has been delayed. Currently, the Funds have credit arrangements with their custodian (*i.e.,* overdraft protection).

4. If the Funds were to borrow money from their custodian under their current arrangements or from another bank, the Funds would pay a significantly higher interest rate than the rate that would be earned by other Funds on repurchase agreements and other short-term instruments. Applicants state that this differential represents the bank's profit for serving as middleman between a borrower and a lender.

5. Applicants request an order that would permit the Funds to enter into lending agreements under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Proposed Credit Facility''). Applicants believe that the Proposed Credit Facility would substantially reduce the Funds' potential borrowing costs and enable the Funds to earn higher rates of interest on cash balances they currently invest in Money Market Funds or repurchase agreements. Although the Proposed Credit Facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish a committed line of credit or other borrowing arrangements with banks. The Funds would also continue to maintain overdraft protection with their custodian.

6. Applicants anticipate that the Proposed Credit Facility would enable the Funds to borrow for temporary purposes at a substantially reduced cost in the event of unexpected cash needs due to ''failed'' sales of securities or an unanticipated volume of redemption requests or for other reasons. Sales fails

[1] *First American Strategy Funds, Inc.,* Investment Company Act Rel. Nos. 22173 (Aug. 26, 1996) (notice) and 22241 (Sept. 23, 1996) (order), *amendment by First American Funds, Inc.,* Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order).

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the order in the future will do so in accordance with representations and conditions of application.

[3] *First American Funds, Inc.,* Investment Company Act Rel. Nos. 22910 (Nov. 25, 1997) (notice) and 22950 (Dec. 23, 1997) (order) (''Cash Sweep Order'').

[4] *First American Investment Funds, Inc.,* Investment Company Act Rel. Nos. 22537 (March 3, 1997) (notice) and 22589 (March 28, 1997) (order).

may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from the securities sold. In the event the Funds are unable to liquidate portfolio securities for immediate settlement to meet redemption requests, which normally are effected immediately, they will not receive payment in settlement for up to three days. The Proposed Credit Facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. While borrowing arrangements with banks will continue to be available to cover unexpected cash needs, under the Proposed Credit Facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans and for overdraft protection with its custodian bank. In addition, Funds lending through the Proposed Credit Facility would earn interest at a rate higher than they otherwise could obtain from investing their cash balances in repurchase agreements or the Money Market Funds. Thus, applicants believe that the Proposed Credit Facility will benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any loan made pursuant to the Proposed Credit Facility (the ''Interfund Loan Rate'') will be the average of the current overnight repurchase agreement rate available either directly or through the Joint Accounts (the ''Repo Rate'') and a single benchmark rate set for all Funds (the ''Bank Loan Rate''). The Bank Loan Rate will be calculated by USBAM each day according to a formula established by each Fund's board of directors (''Board'') to approximate the lowest interest rate at which bank loans would be available to the Funds. The formula will be based upon a publicly available rate (e.g., Federal Funds plus 25 basis points) and will vary with this rate so as to reflect changing bank loan rates. The initial Bank Loan Rate formula and any subsequent modifications to the formula will be subject to the approval of each Fund's Board. Each Fund's Board periodically will review the continuing appropriateness of reliance on the formula to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates.

9. The Proposed Credit Facility will be administered by the Cash Sweep and Interfund Borrowing Committee of USBAM (the ''Committee'') and is composed of USBAM's chief executive officer, chief investment officer, chief operating officer, corporate counsel and head of compliance operations. The Proposed Credit Facility will be available to Funds as lenders if the Fund would otherwise invest on any given day in the Money Market Funds pursuant to the Cash Sweep Order, or, in the case of Money Market Funds, if that Fund would otherwise invest in overnight repurchase agreements or other high quality short-term investments. Under the Proposed Credit Facility, the portfolio managers for each participating Fund, other than the Money Market Funds, may provide the Committee with instructions to participate as a borrower or lender. On each business day, the Committee will collect data on the uninvested cash balances and borrowing requirements of all participating Funds, other than the Money Market Funds, from the Funds' custodian. With respect to the Money Market Funds, the portfolio managers will inform the Committee of the amount of cash, if any, they wish to make available under the Proposed Credit Facility as a lender. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions. Once it determines the aggregate amount of cash available for loans and borrowing demand, the Committee will allocate loans among borrowing Funds. Applicants expect that there typically would be far more available uninvested cash for borrowing than borrowing demand. After the Committee has allocated cash for interfund loans, it will inform the Money Market Fund managers of the amount of loans, if any, made for the account of each Money Market Fund, so that the Fund managers may invest any remaining cash in other available short-term instruments. With respect to other participating Funds, the Committee will follow standing instructions from the portfolio managers to invest the remaining amounts daily in the Money Market Funds pursuant to the Cash Sweep Order.

10. The Committee will allocate borrowing demand and cash available for lending among the Funds on an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to keep the number of transactions and associated administrative costs to a minimum. To reduce transaction costs, each single loan normally will be allocated to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures will be established by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. USBAM will (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and restrictions, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to the Boards of the Funds concerning any transactions by the Funds under the Proposed Credit Facility and the interest rates charged. USBAM will administer the Proposed Credit Facility as part of its duties under its existing management agreement with each Fund and would receive no additional fee as compensation for its services.

12. Each Fund's participation in the Proposed Credit Facility will be governed by and be consistent with its organizational documents and fundamental investment restrictions. Each Fund currently has a non-fundamental investment restriction limiting borrowings to 10% of total assets and barring the Funds from borrowing for leverage purposes. In the event a Fund does not have an investment restriction that prohibits the Fund from borrowing for other than temporary or emergency purposes, that Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days. No Fund will be permitted to participate in the Proposed Credit Facility unless the Fund has fully disclosed all material information concerning the Proposed Credit Facility in its statement of additional information.

13. Applicants state that certain Funds operate in reliance on the Order. Applicants state that condition 2 of the Order provides that Underlying Portfolios, as defined in the Order, will not acquire securities of other investment companies in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants request that condition 2 of the Order be amended solely to the extent necessary to permit the Underlying Portfolios to engage in interfund borrowing and lending transactions through the Proposed Credit Facility.

14. Applicants seek an order pursuant to section 6(c) of the Act exempting them from sections 18(f) and 21(b) of the Act, pursuant to section 12(d)(1)(J) of

the Act exempting them from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act exempting them from sections 17(a)(1) and 17(a)(3) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements. Applicants also seek an exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act solely to the extent necessary to amend the Order.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having USBAM as their common investment adviser and having the same Board.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the Proposed Credit Facility transactions do not raise these concerns because (a) USBAM will administer the program as a disinterested fiduciary, (b) all interfund loans will consist only of uninvested cash balances the lending Fund would have invested in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund, (c) the interfund loans will not involve a greater risk than other similar investments, (d) the lending Funds will receive interest at a rate higher than it could otherwise receive for similar short-term investments, and (e) the borrowing Funds will pay interest at a rate lower than otherwise available to them under bank loan agreements. Moreover, applicants believe that the other conditions in the application will effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund. For the same reasons, applicants believe that the proposed amendment of the Order satisfies the standards of section 17(b) of the Act.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b), and from 17(a) to amend the Order, and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the Proposed Credit Facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that USBAM would receive no additional compensation for its services in administering the Proposed Credit Facility. Applicants also note that the purpose of the Proposed Credit Facility is to provide economic benefits for all the participating Funds. Applicants further state that for all of the above reasons, the requested amendment of the Order does not implicate any of the concerns behind section 12(d)(1) of the Act.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 percent for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the Proposed Credit Facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds under the Proposed Credit Facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates, unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the Proposed Credit Facility is consistent with the provisions, policies

and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and restrictions. Applicants believe that each Fund's participation in the Proposed Credit Facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rate to be charged to the Funds under the Proposed Credit Facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for interfund loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than both the Repo Rate and the then-current yield on the highest-yielding Money Market Fund in which the lending Fund could invest under the Cash Sweep Order, and its investment policies and restrictions, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any interfund loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan of the Fund, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in no event over seven days), and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund loan agreement entitling the lending Fund to call the interfund loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the Proposed Credit Facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the Proposed Credit Facility only on a secured basis. A Fund may not borrow through the Proposed Credit Facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding interfund loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No Fund may lend to another Fund through the Proposed Credit Facility if the loan would cause its aggregate outstanding loans through the Proposed Credit Facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each interfund loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

10. A Fund's participation in the Proposed Credit Facility must be consistent with its investment policies and limitations and its organizational documents.

11. Except as set forth in this condition, no Fund may borrow through the Proposed Credit Facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the Proposed Credit Facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

12. The Committee will calculate total Fund borrowing and lending demand through the Proposed Credit Facility, and allocate interfund loans on an equitable basis among the Funds. The Committee will not solicit cash for the Proposed Credit Facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Committee will invest amounts remaining after satisfaction of borrowing demand in accordance with standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio managers of the Money Market Funds.

13. USBAM will monitor the interest rates charged and the other terms and conditions of the interfund loans and will make a quarterly report to the Boards of the Funds concerning the participation of the Funds in the Proposed Credit Facility and the terms and other conditions of any extensions of credit thereunder.

14. Each Fund's Board, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the Proposed Credit Facility during the preceding quarter for compliance with the conditions of any order permitting the transactions, (b) will establish the Bank Loan Rate formula used to

determine the interest rate on interfund loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula, and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the Proposed Credit Facility.

15. In the event an interfund loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, USBAM will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of each Fund involved in the loan who will serve as arbitrator of disputes concerning the interfund loans.[5] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on all Funds involved. The arbitrator will submit, at least annually, a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the Proposed Credit Facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on the Money Market Funds and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. USBAM will prepare and submit to the Funds' Boards for review an initial report describing the operations of the Proposed Credit Facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the Proposed Credit Facility, USBAM will report on the operations of the Proposed Credit Facility at the Boards' quarterly meetings. In addition, for two years following the commencement of the Proposed Credit Facility, the independent public accountant for each Fund shall prepare an annual report that evaluates USBAM's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield on the highest yielding Money Market Fund in which a lending Fund is permitted to invest, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Boards; and (e) that the interest rate on any interfund loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the interfund loan.

After the final report is filed, the Funds' external auditors, in connection with their Fund audit examinations, will continue to review the operation of the Proposed Credit Facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the Proposed Credit Facility upon receipt of requisite regulatory approval unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

Applicants also agree that condition number 2 to the Order will be modified as follows:

No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that an Underlying Portfolio has obtained exemptive relief from the Commission permitting it to (i) purchase securities of an affiliated money market fund for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7326 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] If the dispute involves Funds with separate Boards, the directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25490; File No. 812–12714]

Integrity Life Insurance Company, et al.; Notice of Application

March 20, 2002.

AGENCY: Securities and Exchange Commission (''SEC or ''Commission'')

ACTION: Notice of application for an order pursuant to pursuant to section 26(c) of the Investment Company Act of 1940 (the ''Act''), approving substitution of shares of one registered management investment company with shares of another registered management investment company.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio (the ''Substitution'').

APPLICANTS: Integrity Life Insurance Company (''Integrity''), Separate Account II of Integrity Life Insurance Company (''Integrity Separate Account''), National Integrity Life Insurance Company (''National Integrity''), Separate Account II of National Integrity Life Insurance Company (''National Integrity Separate Account'') and Touchstone Advisors, Inc. (''Touchstone'') (collectively, the ''Applicants'').

FILING DATE: The application was filed on December 7, 2001 and amended and restated on March 18, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 15, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. For Applicants: P.O. Box 740074, Louisville, Kentucky, 40202–3319.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna

MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (202–942–8090).

Applicants' Representations

1. The Integrity Separate Account was established under Ohio law in 1992. The Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by Integrity. One Integrity variable annuity contract (the ''Integrity Contract'') is affected by this application.

2. National Integrity is a stock life insurance company organized under the laws of New York. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern Life Insurance Company.

3. The National Integrity Separate Account was established under New York law in 1992. The National Integrity Separate Account is registered under the Act as a unit investment trust and is used to fund variable annuity contracts issued by National Integrity. One National Integrity variable annuity contract (the ''National Integrity Contract'') is affected by this application (collectively, Integrity Contracts and National Integrity Contracts referred to as the ''Contracts'').

4. Purchase payments under the Contracts are allocated to one or more subaccounts of the Separate Accounts. Income, gains and losses, whether or not realized, from assets allocated to the Separate Accounts are, as provided in the Contracts, credited to or charged against the Separate Accounts without regard to other income, gains or losses of Integrity and National Integrity, as applicable. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by Integrity or National Integrity, as applicable. Nevertheless, all obligations arising under the Contracts, including the commitment to make annuity payments or death benefit payments, are general corporate obligations of Integrity and National Integrity. Accordingly, all of the assets of each of Integrity and National Integrity are available to meet its obligations under its Contracts.

5. Touchstone, a subsidiary of Western and Southern Life Insurance Company, is an investment adviser registered under the Investment Advisers Act of 1940. As of December 31, 2001, Touchstone had $1.6 billion in assets under management.

6. Each of the Contracts permits allocations of accumulation value to available subaccounts that invest in specific investment portfolios of underlying mutual funds. At the time of filing this application, the Integrity Contract offered 50 portfolios and the National Integrity Contract offered 31 portfolios. Both Contracts offer the Morgan Stanley High Yield Portfolio of the Universal Institutional Funds, Inc. (the ''Universal Funds'').

7. Both Contracts permit transfers of accumulation value from one subaccount to another subaccount at any time prior to annuitization, subject to certain restrictions and charges. No sales charge applies to such a transfer of accumulation value among Subaccounts. The Contracts permit up to twelve free transfers during any contract year. A fee of $20 may be imposed on transfers in excess of twelve in a contract year. Transfers must be at least $250, or, if less, the entire amount in the subaccount from which value is to be transferred. A variety of types of automatic scheduled transfers are permitted without charge and are not counted against the twelve free transfers in a contract year.

8. Each of the Contracts reserves the right, upon notice to contractowners, to add, combine or remove subaccounts, or to withdraw assets from one subaccount and put them into another subaccount. The reserved right is disclosed in each Contract's prospectus.

9. The Morgan Stanley High Yield Portfolio, a separate series of the Universal Funds, is currently an investment option under the Contracts. The Universal Funds is an open-end management investment company registered under the Act. The Morgan Stanley High Yield Portfolio is managed by Morgan Stanley Asset Management, Inc. (''MSAM'').

10. The investment objective of the Morgan Stanley High Yield Portfolio is to seek above-average total return over a market cycle of three to five years by investing primarily in high yield securities (commonly referred to as ''junk bonds''). The total annual expenses of the Morgan Stanley High Yield Portfolio for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.26% in management fees and .54% in other expenses). Absent voluntary reimbursements by MSAM, those expenses would have been 1.04% (.50% in management fees and .54% in other expenses). As of December 31, 2001, the Morgan Stanley High Yield Portfolio had $52.9 million in assets. As of December 31, 2001, the average annual total returns of the Morgan Stanley High Yield Portfolio, whose inception date is August 31, 1992, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.87%	−4.33%	−1.50%	n/a	4.13%

11. The Touchstone High Yield Fund is a separate series of the Touchstone Variable Series Trust, an open-end management investment company registered under the Act. It is currently not an investment option under the Contracts. The Touchstone High Yield Fund is managed by Touchstone.

12. The investment objective of the Touchstone High Yield Fund is to achieve a high level of current income as its main goal, with capital appreciation as a secondary consideration, by investing primarily in high yield securities. The total annual expenses of the Touchstone High Yield Fund for the fiscal year ended December 31, 2000 were .80% of average daily net assets (.10% in management fees and .70% in other expenses). Absent voluntary reimbursements by Touchstone Advisors, Inc., those expenses would have been 1.50% (.60% in management fees and .90% in other expenses). However, on February 21, 2002, Touchstone's Board of Directors voted to amend the investment advisory agreement with the Touchstone High Yield Fund to decrease the contractual management fee before waivers and reimbursements to .50% effective May 1, 2002. As of December 31, 2001, the Touchstone High Yield Fund had $17.2 million in assets. As of December 31, 2001, the average annual total returns of the Touchstone High Yield Fund, whose inception date is May 17, 1999, were as follows:

1 year	3 years	5 years	10 years	Life of portfolio
5.38%	n/a	n/a	n/a	−2.07%

13. Applicants seek an order permitting the substitution of shares of Touchstone High Yield Fund for shares of the Morgan Stanley High Yield Portfolio. The Substitution will take place at the portfolios' relative net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment in either of the subaccounts. Accordingly, there will be no financial impact on any contractowner. The Substitution will be effected by having each of the subaccounts that invests in the Morgan Stanley High Yield Portfolio redeem its shares at the net asset value calculated on the date of the Substitution and purchase shares of the Touchstone High Yield Fund at the net asset value calculated on the same date.

14. The Substitution will be described in supplements to the prospectuses for the Contracts (''Stickers'') filed with the Commission and mailed to contractowners. The Stickers will give contractowners notice of the Substitution and will describe the reasons for engaging in the Substitution. The Stickers will also inform contractowners with value allocated to a subaccount investing in the Morgan Stanley High Yield Portfolio that no additional amount may be allocated to those subaccounts on or after the date of the Substitution. In addition, the Stickers will inform affected contractowners that they will have the opportunity to reallocate accumulation value:

- Prior to the Substitution from the subaccounts investing in the Morgan Stanley High Yield Portfolio, and
- For 30 days after the Substitution from the subaccounts investing in Touchstone High Yield Fund to subaccounts investing in other portfolios available under the respective Contracts, without the imposition of any transfer charge or limitation and without diminishing the number of free transfers that may be made in a given contract year.

15. The prospectuses for the Contracts, as supplemented by the Stickers, will reflect the Substitution. Each contractowner will be provided with a prospectus for the Touchstone High Yield Fund before the Substitution. Within five days after the Substitution, Integrity and National Integrity will each send affected contractowners written confirmation that the Substitution has occurred.

16. Integrity and National Integrity, as applicable, will pay all expenses and transaction costs of the Substitution, including all legal, accounting and brokerage expenses relating to the Substitution. No costs will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the Substitution, nor will their rights or the obligations of the Applicants under the Contracts be altered in any way. The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution. The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

17. Applicants believe that their request satisfies the standards for relief of section 26(c) of the Act, as set forth below, because the affected contractowners will have:

(1) Contract value allocated to a subaccount invested in a portfolio with an investment objective and investment policies substantially similar to the investment objective and policies of the substituted portfolio—both the Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund seek a high return by investing primarily in high yield securities;

(2) superior performance to that of the substituted portfolio—the Touchstone High Yield Fund has consistently outperformed the Morgan Stanley High Yield Portfolio since its inception; and

(3) current total annual expenses that are the same as those of the substituted portfolio—the Touchstone High Yield Fund has the same current total annual expenses as the Morgan Stanley High Yield Portfolio and anticipates decreasing its gross expenses as it achieves economies of scale through asset growth.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions that might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, in the insurance product context, a contractowner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. Applicants have reserved the right to make such a substitution under the Contracts and this reserved right is disclosed in each Contract's prospectus.

4. Substitutions have been common where the substitute portfolio has investment objectives and policies that are similar to those of the eliminated portfolio, current expenses that are similar to or lower than those of the eliminated portfolio, and performance that is similar to or better than that of the eliminated portfolio. The Morgan Stanley High Yield Portfolio and the Touchstone High Yield Fund have substantially similar investment objectives and policies. The current total annual expenses for each of the portfolios are .80%. The Touchstone High Yield Fund has had consistently better performance than the Morgan Stanley High Yield Portfolio since its inception.

5. The Substitution will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(1) The Touchstone High Yield Fund is an appropriate portfolio to which to move contractowners with value allocated to the Morgan Stanley High Yield Portfolio because the portfolios have substantially similar investment objectives and policies.

(2) The costs of the Substitution, including any brokerage costs, will be borne by Integrity and National Integrity and will not be borne by contractowners. No charges will be assessed to effect the Substitution.

(3) The Substitution will be at the net asset values of the respective shares without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's cash value or death benefit or in the dollar value of his or her investment of either of the subaccounts.

(4) The Substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the Substitution than before the Substitution and in each case will result in contractowners' contract values being moved to a portfolio with the same current total annual expenses (including lower current management fees) than the current total annual expenses of the Morgan Stanley High Yield Portfolio.

(5) Touchstone will cap total annual expenses of the Touchstone High Yield Fund at .80% of average daily net assets for a two-year period beginning on the date of the Substitution.

(6) All contractowners will be given notice of the Substitution prior to the Substitution and will have an opportunity for 30 days after the Substitution to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation and without being counted as one of the contractowner's free transfers in a contract year.

(7) Within five days after the Substitution, Integrity and National Integrity will send to its affected contractowners written confirmation that the Substitution has occurred.

(8) For those contractowners who are contractowners on the date of the Substitution, Integrity and National Integrity will not increase Separate Account or Contract fees and expenses for a two-year period beginning on the date of the Substitution.

(9) The Substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of Integrity and National Integrity.

(10) The Substitution will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

Conclusion

Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7289 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–8072, File No. S7–04–02]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; Request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 15, 2002. This meeting seeks to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 15, 2002. Your comments must be received by April 10, 2002 in order to be considered for discussion by conference participants.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also can be sent electronically to the following e-mail address: *rule-comments@sec.gov.* Comment letters should refer to File No. S7–04–02; if e-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW, Washington, DC 20549–0102. All electronic comment letters will be posted on the Commission's Internet Web site, *http://www.sec.gov.*[1]

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0310, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings and the securities industry since the adoption of the federal regulatory structure in the Securities Act of 1933 (the ''Securities Act'').[2] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[3] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators that can assist in carrying out that Section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;
- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] 15 U.S.C. 77a *et seq.*

[3] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 2002 meeting will be the nineteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed the National Securities Markets Improvement Act of 1996 (''NSMIA'') [4] as a result. NSMIA contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 2002 Conference

The Commission and the North American Securities Administrators Association, Inc. (''NASAA'') [5] are planning the 2002 Conference on Federal-State Securities Regulation, which will be held April 15, 2002 in Washington, DC. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite specific self-regulatory organizations (''SROs'') to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, market regulation, investment management, investor education, and enforcement.

(1) Corporation Finance Issues

NSMIA amended section 18 of the Securities Act [6] to preempt state blue-sky registration and review of offerings of covered securities.[7] Covered securities, as defined by section 18, include several types of securities. One class of covered securities is securities traded on the national markets like the New York Stock Exchange, Inc. (''NYSE''), American Stock Exchange LLC (''Amex'') and the Nasdaq National Market System (''Nasdaq/NMS''). Covered securities also include registered investment company securities and some exempt securities and offerings.

The states retain some authority over offerings of covered securities despite this preemption. Except for nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain antifraud authority over all securities offerings, including offerings of covered securities.

Securities that are not covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, like those quoted on the Nasdaq SmallCap market or the over-the-counter Bulletin Board, or in the ''pink sheets.'' Securities issued under some federal exemptions from registration are not covered securities; the states retain authority to register or exempt those securities. These include securities issued in unregistered offerings under the following exemptions:

- Section 3(a)(11) of the Securities Act and Rule 147 for intrastate offerings; [8]
- Section 4(2) of the Securities Act where the offering does not meet the safe harbor requirements of Rule 506 of Regulation D; [9]
- Regulation A; [10] and
- Rules 504 and 505 of Regulation D.[11]

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. Staff from the Commission's Division of Corporation Finance and state representatives will discuss ways to increase uniformity between the systems. The group will focus primarily on the following topics:

A. Transactions Involving ''Qualified Purchasers''

Under the provisions of section 18 of the Securities Act, an additional category of covered securities is subject to preemption, *i.e.,* transactions involving qualified purchasers. This term is subject to definition by the Commission. On December 19, 2001, the Commission published a release proposing an amendment to Rule 146 under the Securities Act.[12] The proposed amendment provides a definition for the term ''qualified purchaser'' for purposes of section 18(b)(3) of the Securities Act in order to implement the provision. As proposed, ''qualified purchaser'' will be defined in the same manner as ''accredited investor,'' under Rule 501 of Regulation D.[13] If adopted, securities offered or sold to a ''qualified purchaser'' will be preempted from state registration requirements. The Commission has sought public comment on the proposed definition. Participants will discuss the proposed amendment.

B. Federal Exemptions

1. Regulation A

The participants will consider possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act. As presently constituted, the provision permits the offer and sale of up to $5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Such offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state

[4] Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[5] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

[6] 15 U.S.C. 77r.

[7] 15 U.S.C. 77r(a) and (b).

[8] 17 CFR 230.147.

[9] 17 CFR 230.501 through 230.508.

[10] 17 CFR 230.251 through 230.263.

[11] 17 CFR 230.504 and 230.505. Other securities also are not considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

[12] Release No. 33–8041 (December 27, 2001) (66 FR 66839).

[13] 17 CFR 230.501.

laws, issuers may be required to provide audited financial statements. Further, the current level of exemption may be too low to invite professional underwriting interest in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consonant with investor protection.

Regulation A also permits the offering of securities in the manner of ''testing the waters'' to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

2. Form D

As the result of a cooperative effort between NASAA and the Commission, in 1982, the Commission adopted Regulation D, which was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale. [14] Issuers must also file the Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption (''ULOE'') [15] and the Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D using the EDGAR system. The conferees will discuss methods of simplifying the form for electronic filing purposes as well as the contents of the notice.

C. Securities of Blank Check Companies

A blank check issuer or company is one in the development stage with no specific business plan or purpose, or one that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.[16] In 1990, the U.S. Congress found that offerings by these kinds of issuers were common vehicles for fraud and manipulation in the market for penny stocks. The Commission has adopted several rules, as Congress directed, to deter fraud in connection with these offerings.[17]

The group will discuss matters of mutual concern relating to these offerings, including recent developments and possible new rules and revisions of existing rules.

D. General Disclosure and Other Developments Impacting the Registration and Review of Securities Offerings

On February 13, 2002, the Commission announced its intention to propose new corporate disclosure rules in an effort to improve the financial reporting and disclosure system.[18] The rule amendments would govern insider transactions and secondary market reporting, and disclosures about critical accounting policies. Generally, the proposed rules will:

- Accelerate quarterly and annual reporting—the due date for quarterly reports will be shortened from 45 to 30 days after the period end; annual reports will be due 60 days after year end, rather than 90 days;
- Require companies to post their Securities Exchange Act of 1934 (''Exchange Act'') [19] reports on their websites concurrently with Commission filings;
- Expand the list of significant events requiring current disclosure on Form 8–K, and accelerate the current due dates to no later than the second business day following the occurrence that triggered the Form 8–K filing;
- Require accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company; and
- Require disclosure of critical accounting policies in the Management's Discussion and Analysis of Financial Condition and Results of Operations (''MD&A'') section of periodic reports.[20]

Participants will discuss these possible rule amendments and other initiatives aimed at improving the financial reporting and disclosure system.

(2) Market Regulation Issues

A. Business Continuity Planning for Broker-Dealers

The participants will discuss business continuity planning for broker-dealers in light of the lessons learned from the events of September 11, 2001.

B. Shorter Settlement Cycles and Immobilization of Stock Certificates

In an effort to reduce systemic risks and increase efficiencies, the Commission issued a rule in 1993 that required the industry to reduce the settlement time for securities transactions from five days to three days (T+3) by June 1995.[21] The Commission believes that the reasons identified at that time, mainly the reduction of settlement risk and an increase in efficiencies, continue to present sufficient justification to again shorten the securities settlement time.

In 2000 the Securities Industry Association (''SIA'') prepared a report, ''*The Business Case Model,*'' containing a cost-benefit analysis and a proposed implementation strategy for T+1. The report concluded that while the industry strongly supports T+1 because it would significantly reduce settlement exposure and create efficiencies, the cost of implementing the necessary systems and operational improvements would be substantial.

To offset these costs, the industry is proposing that the Commission promulgate a number of regulatory changes. One of the more controversial of the proposed changes is adding rules to discourage the issuance and use of physical certificates. The report indicates that the costs of processing physical securities and the risks inherent with the use of physical securities are significant to the industry and ultimately their customers. Therefore, in connection with shortening the settlement cycle, the industry is proposing that new securities be issued in book-entry form only. They also suggest that the Commission, or alternatively the exchanges and the National Association of Securities Dealers, Inc. (''NASD''), adopt rules to prohibit a broker-dealer from taking a sell order unless the shares are on deposit with the broker-dealer, a bank, or in the book-entry direct registration system operated by the Depository Trust Company (''DTC'').

The Commission's staff will explore with NASAA ways in which to discourage the issuance and use of physical certificates, restrictions imposed by certain state laws and

[14] 17 CFR 230.503.

[15] The ULOE provides a uniform exemption from state registration for offerings complying with Regulation D.

[16] *See* section 7(b)(3) of the Securities Act, 15 U.S.C. 77g(b)(3).

[17] 17 CFR 230.419 and 17 CFR 240.15g–8.

[18] Securities and Exchange Commission Press Release No. 2002–22 (February 13, 2002).

[19] 15 U.S.C. 78a *et seq.*

[20] Item 303 of Regulations S–B and S–K, 17 CFR 228.303 and 17 CFR 229.303.

[21] 17 CFR 240.15c6–1.

exchange listing standards regarding the issuance of physical certificates, and requiring listed companies to issue in book-entry only.

C. Possible Changes to NASD Rules Relating to Tape Recording of Communications

The participants may discuss a proposed rule change filed with the Commission by the NASD to amend NASD Rule 3010(b)(2) (the ''Taping Rule'') and NASD Interpretive Memorandum (''IM'') 8310–2.[22] Under the Taping Rule, firms that hire a significant number of employees from previously disciplined firms must employ special written procedures to supervise the telemarketing activities of their registered persons, install taping systems to record all telephone conversations between registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD Regulation. The proposed changes generally would: (1) Permit firms that become subject to the Taping Rule a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not counting certain short-term employees of disciplined firms toward the threshold levels; (3) extend the compliance deadline to install taping systems to 60 days; (4) clarify the NASD staff's authority to grant exemptions in exceptional cases only; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, NASD Regulation proposes amendments to NASD IM–8310–2 to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule.

D. Possible Revisions to Form BD

Under the regulatory scheme of the Exchange Act, broker-dealers must register with the Commission, as well as with at least one self-regulatory organization. Broker-dealers apply for registration by filing Form BD,[23] the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant or registrant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

The Commission last amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository (''CRD'') system.[24] Since the July 1999 amendments, the President signed both the Gramm-Leach-Bliley Act of 1999[25] and the Commodity Futures Modernization Act of 2000 (''CFMA'')[26] into law. On August 21, 2001, the Commission implemented Section 203 of the CFMA, which provides for expedited notice registration for intermediaries trading security futures products.[27] Specifically, the Commission adopted Form BD–N and related rules to permit futures commission merchants and introducing brokers that are both registered with the Commodity Futures Trading Commission and members of the National Futures Association to register by notice with the Commission as broker-dealers for the limited purpose of trading security futures products (*i.e.,* futures on individual securities and narrow-based security indexes).

These developments may indicate the need for possible further amendments to Form BD. Other amendments to the form may also be considered, including (1) requiring owners of non-voting stock to disclose their identity; (2) requiring the disclosure of unregistered satellite offices and expanding the disclosure requirements; and (3) requiring the disclosure of the Commission number of a registered entity if the entity does not have a CRD number.

E. Regulatory Regime for Certain Brokers

A task force of the American Bar Association's Small Business Committee is exploring ways to develop a streamlined regulatory regime for persons who are classified as brokers because they earn transaction-based compensation to facilitate capital raising securities transactions, but who do not provide the secondary market services or other services that traditional broker-dealers provide to investors. The Commission's staff, as well as NASD and NASAA personnel, have held several discussions with the task force and its representatives. Moreover, the Government-Business Forum on Small Business Capital Formation, sponsored by the Commission, has discussed similar issues.

Many of these discussions have focused on the speed of the current registration process, and on whether it would be possible to accelerate the process for those persons. Other issues that have been raised include questions about what substantive regulations should apply to these brokers.

The Commission's staff believes that further discussion by representatives of the Commission, the NASD and state securities regulators would be helpful in defining the scope of any problems that exist, and in finding ways to improve the regulatory regime for these brokers.

F. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: examination priorities, summits and examination coordination, branch office examinations, complaint trends, and anti-money laundering compliance.

(3) Investment Management Issues

A. Electronic Filing and the Investment Adviser Registration Depository (''IARD'')

Investment advisers registered with the Commission completed their transition to electronic filing on IARD between January 1 and April 30, 2001 using amended Form ADV.[28] New advisers applying for registration with the Commission after January 1, 2001 also filed electronically through IARD since paper filings are no longer accepted. State registered advisers began switching to the electronic filing process on IARD during 2001. Conferees will review and discuss the performance of IARD during its initial year of operation. The transition of investment adviser representatives to electronic filing in 2002 will be discussed. Conferees also will discuss issues related to the future use and development of IARD.

B. Division of Regulatory Authority

NSMIA divided regulatory responsibility for investment advisers between the Commission and state securities regulators. Advisers generally register with the Commission if they have assets under management of $25 million or more, or if they advise registered investment companies. Advisers with less than $25 million in assets under management generally must register with the appropriate state securities authorities. Approximately 7,500 advisers currently are registered

[22] SR–NASD–2002–04.

[23] 17 CFR 249.501.

[24] Release No. 34–41594 (July 2, 1999) [64 FR 37586].

[25] Pub. L. 106–102, 113 Stat. 1338 (November 12, 1999).

[26] Pub. L. 106–554, 114 Stat. 2763 (December 21, 2000).

[27] Release No. 34–44730 (Aug. 21, 2001) [66 FR 45137].

[28] 17 CFR 279.1.

with the Commission. The conferees will discuss their experiences with implementing the provisions of NSMIA. Jurisdictional issues related to increased use of the Internet by advisers also will be discussed. Conferees also will discuss ways to work together to help advisers understand and comply with their regulatory responsibilities.

C. Current Issues and Rulemaking Initiatives

Conferees will discuss a number of rulemaking initiatives under the Investment Advisers Act of 1940 [29] and state securities laws that respond to changes in advisory business practices and developments in local, national and global financial markets. Conferees will discuss regulatory developments related to the implementation of privacy requirements for advisers and an adviser's duties to its clients. Conferees also will discuss adviser continuing education needs in light of the expanding financial responsibilities of advisers and dynamic business trends. Ways to enhance the understanding advisers have of their regulatory responsibilities also will be reviewed and discussed.

(4) Investor Education and Assistance Issues

The Commission and NASAA currently pursue a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a long-standing commitment to investor education, and the Commission intends to complement those efforts to the greatest extent possible. Participants will discuss the following investor education initiatives and potential joint projects:

A. Facts on Saving and Investing Campaign

In the spring of 1998, the Commission and NASAA in conjunction with the Council of Securities Regulators of the Americas (''CSA'') launched the ''Facts on Saving and Investing Campaign.'' Led primarily by securities regulators, the campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Participants will discuss this year's campaign, including the Canadian Securities Administrators' heightened involvement and future campaign initiatives. The participants also will discuss other initiatives for international investor education.

B. Investor Summit

The Commission's staff will update NASAA on current plans for the first Investor Summit to be held by the Commission in late spring 2002. The summit aims to give investors nationwide an opportunity to weigh in on the broad policy issues that affect them, including ways to improve corporate disclosure.

C. Financial Literacy 2010

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust (''IPT'') joined forces to launch ''Financial Literacy 2001,'' an unprecedented campaign targeting 25,000 high school teachers across the United States of America. Recently renamed ''Financial Literacy 2010'' to reflect the ongoing commitment to offer the financial education program to teachers, the program aims to encourage—and make it easier for—teachers in every state to teach the basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed and updated a state-by-state customized classroom guide and have provided aggressive distribution and teacher training. Representatives from the states will brief the Commission's staff on the updated program that contains components of economics, the progress of the program, and its dissemination to economics teachers.

D. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission's staff will discuss its continuing efforts to educate investors on how to use the Internet to invest wisely. The Commission's staff will also update the status of the Commission's initiative to launch fake scam sites on the Internet that warn investors about ''get-rich-quick'' schemes.

E. New Programs on Investor Education

Participants will discuss ideas for new investor education programs, including joint NASAA and Commission initiatives.

F. Investor Education Resources

Participants will view the CSA's segment on young investors produced for a national television show, and view the Ontario Securities Commission's Web site created for youth that includes games, quizzes, screen savers, and videos. Participants will also further discuss the most efficient and effective ways to provide educational resources to individuals at both a national and a grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues of mutual interest.

(6) General

There are a number of matters that are applicable to all, or a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of staff examiners and analysts and information sharing. In addition, a committee of the National Conference of Commissioners on Uniform State Laws is in the process of drafting a new version of the Uniform Securities Act. The Uniform Securities Act is a model uniform state securities law statute. Two versions are currently in force—the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The new version will modernize and update the law for many changes including, for example, NSMIA, technology advances, and internationalization of securities trading.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 20, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7288 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[29] 15 U.S.C. 80b–1 *et seq.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45603; File No. SR–CBOE–00–12]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to the Expansion of the Equity Hedge Exemption From Position and Exercise Limits

March 20, 2002.

I. Introduction

On March 31, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the current equity hedge exemption to eliminate position and exercise limits for certain qualified hedge strategies.

On July 20, 2001, the CBOE filed Amendment No. 1 with the Commission.[3] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on August 17, 2001.[4] On February 22, 2002, the CBOE submitted Amendment No. 2 to the proposal.[5] The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange is proposing to eliminate position and exercise limits when certain qualified strategies are employed to establish a hedged equity option position and to establish a position and exercise limit of five times the standard limit for those strategies that include an OTC option contract. Accordingly, the CBOE proposes to amend Interpretation .04 of Exchange Rule 4.11 to expand the definition of a ''qualified'' hedged position. Listed below are the proposed qualified hedge strategies and their accompanying examples.

(i) Positions hedged or covered with the underlying security or securities readily convertible into stock (long call/short stock or short call/long stock or long put/long stock or short put/short stock). This hedge strategy is currently exempt pursuant to the equity hedge exemption provision contained in Exchange Rule 4.11; contracts are covered on a one-for-one basis.

For example, account ABC is short 5,000 GE Apr 35 calls and long 500,000 shares of GE common stock. Account ABC is also short 1,000 GE April 40 calls but has no corresponding stock hedge. The account is exempt on 5,000 contracts hedged with stock and the short 1,000 GE April 40 call position is not considered hedged and thus applied to the applicable position limit.

(ii) Reverse Conversion (buy call/sell put (same expiration)/sell stock).[6] For example, assume account ABC establishes the following position:

Long 25,000 GE April 35 calls
Short 25,000 GE April 35 puts
Short 2,500,000 shares of GE common stock

Under the proposed rule change, two options contracts (*i.e.*, one long call and one short put) will be treated as one contract for hedging purposes. Each reverse conversion option position must be hedged with 100 shares of the underlying security to remain exempt. Account ABC increases its position by establishing a long call position of 5,000 April 40 contracts with no qualified hedge. Option contracts held by account ABC number 55,000 on the short call long put side of the market. The 50,000 contract reverse conversion position is a qualified hedge strategy and is thus exempt from the position and exercise limit. The remaining 5,000 contracts and any future positions established by the account in which a non-qualified strategy is employed would be added to the account's existing 5,000 contract position and applied to the standard position limit.

(iii) Conversion (sell call/buy put (same expiration)/buy stock).[7] The components and hedge treatment of the conversion strategy is the same as the reverse conversion except that the option component of the position is on the short side of the market (*i.e.,* short call, long put) and is hedged with long stock.

(iv) Collar (sell call/buy put, both out-of-the-money when established with the same expiration where the strike price of the short call exceeds the strike price of the long put/buy stock).[8] A collar strategy provides downside protection by the use of put option contracts and finances the purchase of the puts through the sale of short call option contracts. The goal of this strategy is to bracket the price of the underlying security at the time the position is established. For example, assume that the price of an underlying equity, XYZ, is $53 and account ABC is long 5000 shares of XYZ at $53. Account ABC sells 50 XYZ April 55 calls and purchases 50 XYZ April 50 puts. Under the collar exemption, one collar (*i.e.,* one short call, and one long put) must be hedged with 100 shares of the underlying security to remain exempt. Additionally, both call and put components of the option strategy must be out-of-the-money at the time the position is established, both contracts must expire at the same time, and the strike price of the short call must exceed the strike price of the long put position. One leg of the option position (*i.e.*, short call or long put) can be an OTC contract guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

(v) Box Spread (buy call, sell put at one strike price, sell call, buy put at another strike price). Assume that account ABC maintains the following position:

Long 5,000 April 35 calls
Short 5,000 April 40 calls
Long 5,000 April 40 puts
Short 5,000 April 35 puts

This position is a qualified box spread and would be exempt from the position limit. Any future option positions established that do not meet the requirements of the qualified hedge strategies would be applied to the account's applicable position limit.

(vi) Listed vs. OTC Options Spreads (options are generally to be within one strike of each other and no more than

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 19, 2001 (''Amendment No. 1''). In response to comments from Commission staff, the Exchange submitted Amendment No. 1, which (i) deletes language contained in Exchange Rule 4.11 Interpretation .04(b) regarding the limitation on the number of contracts that can be maintained under the equity hedge exemption and (ii) includes examples of the proposed qualified hedge strategies.

[4] *See* Securities Exchange Act Release No. 44681 (August 10, 2001), 66 FR 43274.

[5] *See* Letter from Christopher R. Hill, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 21, 2001 (''Amendment No. 2''). In Amendment No. 2, the CBOE established a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

[6] For these strategies one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account. Hedge transactions and positions established pursuant to these strategies are subject to a position limit equal to five times the standards limit established under CBOE Rule 4.11, Interpretation .02. For purposes of this rule filing, an OTC option contract is defined as an option that is not listed on a National Securities Exchange or cleared at the Options Clearing Corporation.

[7] *Id.*

[8] *Id.*

one expiration month apart).[9] Member firms that conduct an over-the-counter options business utilize the listed options market to hedge their customer facilitated OTC transactions. It is the CBOE's understanding that some member firms participate in stock buy-back programs whereby the firm purchases OTC put option contracts from the subject corporation, the corporation, in turn, will be assigned its short put position, thereby ''buying back'' its own stock.

To hedge this position, the firm will sell put option contracts in the listed market. For example, Firm ABC purchases 50,000 XYZ puts with a strike price of 63.34 expiring in 1/19/03 from XYZ Corporation. At the expiration of the OTC contract, the firm will sell to XYZ Corporation 5,000,000 shares of its common stock at a price of $63.34. To hedge its position, the firm will sell put option contracts on the CBOE; often at a strike price close to the noted OTC contract with the same expiration date as the OTC contract. OTC contracts hedged on a one-for-one basis against listed option contracts would be exempt from the position limit. As the OTC position generally does not change, the Exchange would require the exempt firm to forward to the Exchange, on the Monday following the monthly expiration, the status of its OTC position.

Within the list of proposed hedge strategies eligible for an equity hedge exemption, the Exchange proposes that the option component of a reversal, conversion, or collar position be treated as one contract rather than as two contracts. All three strategies serve to hedge a related stock portfolio. Because these strategies require the contemporaneous[10] purchase/sale of both a call and put component against the appropriate number of shares underlying the option (generally 100 shares), the Exchange believes that the position should be treated as one contract for hedging purposes.

Under the proposed rule change, the existing standard position and exercise limits will remain in place for unhedged equity option positions. Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. The exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange) to the extent that the member identifies that a pre-existing qualified hedge strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to the Exchange.

The exemption will remain in effect to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation. Procedures to demonstrate that the option position remains qualified will be similar to those currently in place for equity hedge exemptions. Currently a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[11] and, in particular, the requirements of section 6 of the Act[12] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[13] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits. The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[14]

The Commission has carefully considered the CBOE's proposal to expand the hedge exemption from position and exercise limits. Given the market neutral characteristic of all the proposed qualified hedge strategies (except covered stock positions), the Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. Specifically, the Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the Exchange will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the CBOE will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

Once an account nears or reaches the standard limit, positions identified as one or more of the proposed qualified hedge strategies will be exempted from limit calculations. Although the exemption will be automatic (*i.e.*, does not require pre-approval from the Exchange), the exemption will remain in effect only to the extent that the exempted position remains intact and that the Exchange is provided with any required supporting documentation.

In addition, as described above, a qualified account must report hedge information each time the option position changes. Hedge information for member firm and customer accounts are reported to the Exchange electronically, via the Large Options Position Report. Market maker account information is also reported to the Exchange

[9] Hedge transactions and positions established pursuant to this strategy are subject to a position limit equal to five times the standards limit established under CBOE Rule 4.11, Interpretation .02.

[10] At or about the same time.

[11] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

electronically by the member's clearing firm. For those option positions that do not change, a filing is generally required on a weekly basis. Finally, the existing requirement imposed on member firms to report hedge information for proprietary and customer accounts that maintain an options position in excess of 10,000 contracts will remain in place.

The Commission believes these reporting requirements will help the CBOE to monitor options positions and ensure that only qualified hedges are being exempt from position and exercise limits. To the extent that any position raises concerns, the Commission believes that the CBOE, through its monitoring, will be promptly notified, and the Commission would expect the CBOE to take any appropriate action, as permitted by its rules.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[15] for approving Amendment No 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 establishes a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component. Setting the position and exercise limit at this level should provide Exchange members greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market. Accordingly, the Commission finds good cause, consistent with sections 6(b)(5)[16] and 19(b)(2)[17] of the Act to accelerate approval of Amendment No. 2 to the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–12 and should be submitted by April 17, 2002.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR-CBOE–00–12), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7327 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45605; File No. SR–GSCC–2001–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Establishing a Loss Allocation Cap for Dealers Acting as Brokers on Substantially All of Their Repurchase Agreement Trades

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 16, 2001, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and an on August 31, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by GSCC. 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 proposed rule change establishes an account-based loss allocation process for dealers that act as brokers in certain repurchase agreement transactions.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC is proposing to amend its current loss allocation rule concerning non-inter-dealer broker (''dealer'') members who act as brokers in certain of their repurchase agreement (repo) transactions. Under the proposed amended rule, repo transaction accounts of these dealers will be subject to the same $5 million per event absolute loss allocation cap currently applicable to inter-dealer brokers (''IDBs'') instead of an unlimited loss allocation liability. The proposed rule change is designed to afford appropriate relief for these dealers while not unfairly burdening other members.

(i) Current Loss Allocation Procedure

If upon liquidating a defaulting member's positions GSCC incurs a loss due to the failure of the defaulting member to fulfill its obligations to GSCC, GSCC looks to the collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's collateral is insufficient to cover the loss, the defaulting member's most ''recent'' trading partners will be looked to, on a pro rata basis, in order to satisfy the ''remaining loss.''

Before the loss can be allocated to the defaulting member's most ''recent'' trading partners, GSCC must first determine the proportion of the loss that arose in connection with member-brokered transactions and non-member brokered transactions and the proportion that arose in connection with direct transactions.

To the extent the remaining loss is determined by GSCC to arise in connection with member brokered transactions, GSCC's rules provide that fifty percent of the loss will be allocated to netting members that are category 1

[2] The Commission has modified parts of these statements.

IDBs or category 2 IDBs pro rata based upon the dollar value of each such IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. The remaining fifty percent of the loss will be allocated to the dealer netting members pro rata based upon the dollar value of the trading activity through IDBs of each such dealer netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with member brokered transactions, an IDB netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than $5 million. A dealer netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to dealer netting members. To the extent that this cap is applicable, any excess amounts not collected from individual netting members, whether an IDB or a dealer, will be reallocated to the netting membership in general, pro rata based on average daily clearing fund deposit requirement over the twelve-month period prior to the insolvency. However, even with the reallocation, an IDB netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million.

To the extent a remaining loss is determined by GSCC to arise in connection with non-member brokered transactions, it will be allocated among the recent category 2 IDB netting members that were parties to such non-member brokered transactions pro rata based upon the dollar value of each such category 2 IDB netting member's trading activity with the defaulting member compared, netted, and novated on the day of default. For purposes of an allocation of loss determined to arise in connection with non-member brokered transactions, there is no loss-allocation cap.

To the extent a remaining loss is determined to arise in connection with direct transactions, it will be allocated among the recent counterparty netting members pro rata based on the dollar value of the trading activity of each such netting member's trading activity with the defaulting member compared, netted, and novated during the recent trading period. For purposes of an allocation of loss determined to arise in connection with direct transactions, there is no loss-allocation cap.

Under the current loss allocation procedure, dealer netting members acting as brokers on all or substantially all of their repo transactions do not enjoy the $5 million per event absolute loss allocation cap applicable to IDBs. Consequently, these dealers likely would be disproportionately assessed for allocation loss in the current environment.

(ii) Proposed Changes

The proposed rule change addresses the manner in which the loss allocation procedure described in subsection (i) above applies to dealers that act as brokers in their repo transactions. Specifically, the proposed rule change would establish an account-based loss allocation process whereby the segregated repo accounts of these dealers would be treated in the same way as IDB accounts.

In order to accomplish this, GSCC is proposing to add two new definitions to its rules, ''non-IDB repo broker'' and ''segregated repo account.'' A non-IDB repo broker, with respect to activity in its segregated repo account, is a dealer netting member that GSCC has determined operates in the same manner as a broker and participates in GSCC's repo netting service pursuant to the same requirements imposed under the rules on IDB netting members that participate in that service. These requirements include keeping their brokered repo activity (with two GSCC netting members on both sides of each trade) in a separate account, the segregated repo account.

Since GSCC's loss allocation procedures with respect to remaining losses distinguish between brokered transactions and direct transactions and since it is with respect to non-IDB repo brokers' brokered transactions that GSCC is proposing to give relief, the proposed rule filing would amend: (i) The definition of ''brokered transaction'' to include transactions to which a non-IDB repo broker, with regard to activity in its segregated repo account, is a party; (ii) the loss allocation rule applicable to brokered transactions to include references to non-IDB repo brokers and the activity in their segregated repo accounts; and (iii) the loss allocation rule to provide non-IDB repo brokers with regard to activity in their segregated repo accounts with a cap on their total loss allocation obligation of $5 million as is currently applied to IDB netting members.

All of the other activity processed by non-IDB repo brokers outside of their segregated repo broker accounts would continue to be subject to the loss allocation rules applicable to dealer netting members.

The proposed rule change is consistent with the requirements of the Act, as amended, and the rules and regulations thereunder because it provides for a more equitable loss allocation process among GSCC's members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW,

Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–10 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7291 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–45607; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 20, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on February 8, 2002, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through June 30, 2002.

On February 2, 1987, pursuant to sections 17A(b) and 19(a) of the Act [3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through March 31, 2002.[6]

The Commission today is extending MBSCC's temporary registration as a clearing agency so that MBSCC may continue to act as a clearing agency while the Commission seeks comment on granting MBSCC permanent registration as a clearing agency. The Commission expects to publish notice requesting comments on permanent registration as a clearing agency during the calendar year 2002.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or institution proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–22 and should be submitted by April 17, 2002.

It is therefore ordered that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through June 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7292 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45604; File No. SR–MBSCC–2001–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding the Monitoring of MBSCC Participants' Financial Condition and Activities

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on November 27, 2001, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change and on December 26, 2001, amended the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MBSCC. 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 proposed rule change strengthens the process regarding MBSCC's monitoring of its participants' financial condition and activities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

To strengthen MBSCC's monitoring of participants' financial condition and activities, as well as to conform to MBSCC's standard practices, MBSCC is proposing the following modifications to its rules: (i) Add a requirement that registered brokers and dealers submit copies of supplemental reports filed with the Commission pursuant to Rule 17a–11 to MBSCC; (ii) establish a formal surveillance status mechanism; (iii) allow non-domestic participants to submit required financial statements prepared in accordance with their home country Generally Accepted Accounting Principles (''GAAP''); and (iv) expand the financial criteria used by MBSCC for calculating a participant's financial ability.

The first proposed modification to the rules would require broker-dealer participants to submit copies of supplemental reports filed pursuant to

[3] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(a).

[2] Letter from Jeffrey F. Ingber, Managing Director, General Counsel and Secretary, MBSCC (February 8, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994), 59 FR 67743; 37372 (June 26, 1996), 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; 41211 (March 24, 1999), 64 FR 15854; 42568 (March 23, 2000), 65 FR 16980; 44089 (March 21, 2001), 66 FR 16961; and 44831 (September 21, 2001) 66 FR 49728.

[7] 15 U.S.C. 78s(a)(1).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

Rule 17a–11 to MBSCC concurrently with their submission to the Commission. Rule 17a–11 requires registered broker-dealers to notify the Commission of a decline in net capital below minimum requirements. Such notices should provide MBSCC with early warnings of such broker-dealers' potential financial problems.

The second proposed modification would enhance MBSCC's policies and procedures regarding its participant surveillance procedures by establishing a formal surveillance status mechanism. The proposed rule change would establish a tiered surveillance mechanism wherein the degree of risk posed by a participant would be appropriately categorized so MBSCC would be able to react more swiftly to changes in a participant's condition.

The third proposed modification would allow non-domestic participants to meet their financial reporting requirements to MBSCC by submitting financial statements prepared in accordance with their home country GAAP. MBSCC's rules currently require these participants to submit financial statements prepared in accordance with U.S. GAAP. MBSCC has found this requirement to be burdensome and unnecessarily restrictive. MBSCC also proposes to permit these participants to use another recognized accounting standard (such as, for example, International Accounting Standards) deemed acceptable by MBSCC. In both cases (when a participant submits financial statements prepared in accordance with their home country GAAP and when a participant submits financial statements prepared in accordance with some other recognized accounting standard deemed acceptable by MBSCC), the participant must provide MBSCC with a discussion of the material variations of the accounting standards used from U.S. GAAP.

The fourth proposed modification allows MBSCC to use net asset value or other applicable indicia in calculating a participant's financial ability. MBSCC's rules do not currently specify the types of financial indicia that MBSCC may use to calculate a participant's net worth for determining whether the participant meets MBSCC's minimum financial requirements. MBSCC's analysts currently use the appropriate financial indicia for each type of participant. For example, shareholders equity is used to determine the financial ability of a bank whereas net asset value is more appropriate for determining the financial ability of certain types of funds, such as most registered investment companies. The proposed rule change would expand the language in MBSCC's rules to permit use of the appropriate financial indicia.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will enhance MBSCC's monitoring of participants' financial condition and activities and thereby should protect MBSCC and its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–2001–06 and should be submitted by April 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7295 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45602; File No. SR–NYSE–2001–40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 and Amendment No. 2 Thereto by the New York Stock Exchange, Inc. Regarding Method of Delivery of Annual Reports and Proxy Materials

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2001, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') 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 NYSE. The Exchange submitted Amendment No. 1 to the proposed rule change on January 15, 2002.[3] The Exchange submitted Amendment No. 2 to the proposed rule change on March 5, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NYSE made technical changes to its rule text. *See* letter to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated January 11, 2002 (''Amendment No. 1'').

[4] In Amendment No. 2, NYSE made additional minor technical changes to its rule text. *See* letter to Nancy Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated March 4, 2002 (''Amendment No. 2'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 203.01, 204.04, 402.04, and 402.10 of the Exchange's Listed Company Manual (''Manual'') in respect of method of delivery of annual reports and proxy materials. The proposed amendment will specify that annual reports and proxy materials should be distributed in such format and by such methods as are permitted or required by applicable law and regulations. Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Listed Company Manual

203.00 Annual and Interim Reporting Requirements

* * * * *

203.01 Annual Report Requirement

The Exchange requires that companies publish at least once a year and distribute to shareholders an annual report containing financial statements of the company and its consolidated subsidiaries prepared in conformity with generally accepted accounting principles. The company must distribute its annual report to its shareholders not later than 120 days (225 days for Non-US issuers) after the close of each fiscal year. Notwithstanding the foregoing, domestic issuers must make this distribution at least fifteen days in advance of the annual meeting. (Non-US issuers are encouraged to do so when possible.) When the annual report is [mailed] *distributed* to shareholders, two copies should be sent to the Exchange together with advice as to the date of [mailing] *distribution* to shareholders.

Companies may satisfy the annual distribution requirement either by distributing an annual report to shareholders, or by distributing to shareholders the Form 10–K (or Form 20–F for Non-US issuers) filed with the SEC, with an indication that it is distributed in lieu of a separate annual report. When the annual report (or Form 10–K or Form 20–F) is *distributed* [mailed] to shareholders, two copies should be sent to the Exchange, together with advice as to the date of *distribution* [mailing] to shareholders. Distribution *shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* ([s]*See,* for example, [materials referenced in Listed Company Manual section 402.04(B)] *the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release No. 34–42728, File No. S7–11–00.* [by electronic means (including by posting on the company's web site) will be effective only as to beneficial holders who have given their prior consent to receiving the report in that form. Such consent must be in writing, which may be in the form of electronic mail.]

* * * * *

(A) through (D)—No change.

(E) Occasional Delay in Issuance of Statements.

* * * * *

So far as the [three months time limit of the listing agreement] *120 day (225 day) time limit stated in the first paragraph of this Section 203.01* is concerned, the Exchange, while ready to extend such time limit on the basis of necessity, does not feel free to do so on the basis of convenience. For example it cannot consent to a delay in the issuance of the statements just to make possible their simultaneous *distribution* [mailing] with the proxy material.

* * * * *

204.00 Notices by the Company to the Exchange

* * * * *

204.04 Annual Report

The Exchange requires that two copies of the company's annual report be provided to the Exchange when it is [mailed] *distributed* to shareholders. These reports should be accompanied by notice to the Exchange as to the date [mailed] *distributed* to shareholders.

* * * * *

402.00 Proxies

* * * * *

402.04 Proxy Solicitation Required

* * * * *

(B) *Proxy materials shall be in such format and shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC).* [Electronic Delivery of Proxy Materials. As permitted by applicable state and federal law (including any interpretations thereof by the SEC) a company may arrange for the delivery of its proxy material by electronic means (including by posting on company's web site with an electronic mail notice to the beneficial owner of its availability on the web site) to beneficial owners who have given prior written consent to such a delivery. Such consent may be in the form of electronic mail. Such arrangements should be made in coordination with any intermediaries that are record holders of the securities. Proxies may also be delivered by electronic means by beneficial owners as permitted by applicable state and federal law (including any interpretation thereof by the SEC) and if appropriate arrangements have been made with any intermediaries that are record holders of the securities.] (See, for example, the following interpretations by the SEC: Release No. 34–36345; File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release [Nos. 33–7856,] *No.* 34–42728, File No. S7–11–00). *Companies should also note the NYSE Rules (451 and 465) applicable to members and member organizations regarding the furnishing of annual reports and proxy materials to account holders.*

* * * * *

402.10 Charges by Member Organizations for Distributing Material

* * * * *

(A) through (B) No change.

(C) Charges for Interim Report *Distributions* [Mailings].

* * * * *

''Householding'' of Reports

Rules 451 and 465 require member organizations to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Member organizations are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions or reports, statements or other materials to beneficial owners having the same address, provided *they comply with applicable SEC rules with respect thereto (see SEC Rule 14b–1 under the Securities Exchange Act of 1934).* [that (i) at least one such report or statement is transmitted to a beneficial owner at that address; and (ii) any beneficial owner having that address, to whom a report is not sent, has agreed thereto in writing.]

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 NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

In 1999, the Exchange filed amendments to Section 203 of the Manual clarifying that listed companies were permitted to make electronic delivery of annual reports to beneficial holders, as long as beneficial holders had given prior written consent to such delivery. The Commission approved the rule change in March 2000.[5]

Last year, the Exchange filed an amendment to Section 402.04 of the Manual extending the same electronic delivery option to delivery of proxies and proxy material, subject to the same affirmative written assent from beneficial holders.[6] Responding to comments from the Commission staff, the Exchange modified the proposed amendment to specify that companies arranging for the electronic delivery of proxy materials must do so as permitted by and in compliance with applicable state and federal law, including any applicable interpretation by the Commission.[7] The amended rule change was approved by the Commission in March 2001.[8]

Thereafter, the Exchange received comments from listed companies maintaining that the Exchange's requirement of prior written consent for delivery of proxy materials to beneficial holders is more restrictive than the prerequisites contained in the Commission's current interpretations. The Exchange has also been asked whether delivery of these materials on a compact disk is permissible, and whether delivery of a CD by mail is delivery of the information by electronic means.

The Exchange staff discussed all of the foregoing with the Exchange's Legal Advisory Committee (''LAC'') in June of this year. Specifically, it was noted that the Commission in effect had pre-empted the field in terms not only of the content of proxy material and the annual report, but also in regulating delivery of the material to investors, issuing specific interpretations since 1995. The LAC agreed that in view of this, it is advisable for the Exchange to cease attempting to legislate for listed companies how they must act in this regard. Accordingly, as recommended by the LAC, the Exchange proposes to eliminate from Section 402.04 any specific requirements regarding the format and method of delivery, specifying instead that companies should distribute proxy materials in such format and by such methods as are permitted or required by applicable law and regulations. To be helpful the Exchange will retain the informational references to the applicable Commission interpretive releases, and will cross-reference the Exchange's rules 451 and 465 applicable to members and member organizations when they furnish information to account holders. To be consistent, the Exchange also proposes to make similar amendments to Sections 203.01 and 204.04, dealing with annual reports.

Finally, the Exchange is proposing to make housekeeping changes to Section 203.01(E) of the Manual relating to time limits for the delivery of annual reports and to Section 402.10 of the Manual relating to householding of reports to conform to related rule changes effected last year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, because 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 burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange 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 be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) by order approve the proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2001–40 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7296 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 42574 (March 24, 2000), 65 FR 17326 (March 31, 2000).

[6] File No. SR–NYSE–2000–21.

[7] Applicable Commission interpretations, which are cited in Section 402.04, as amended, include October 1995 Release *Use of Electronic Media for Delivery Purposes;* May 1996 Release *Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information;* and April 2000 Release *Delivery of Proxy Statements and Information to Households.* (Release No. 34–36345, File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; Release No. 34–42728, File No. S7–11–00.)

[8] Securities Exchange Act Release No. 44133, 66 FR 18134 (April 5, 2001).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45594; File No. SR–PCX–2002–05]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Hearing Fees for Issuer Requests for Review of Delisting Decisions

March 19, 2002.

On January 18, 2002, the Pacific Exchange, Inc. (''PCX''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend PCXE Rule 5.5(m) to require issuers to pay an appeal hearing fee of $2,500 in connection with their appeal of the Corporation's decision to delist a security.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(4) of the Act,[6] which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among issuers. The Commission believes that the fees are reasonable because they are designed to recoup the costs of processing requests for review and holding the subsequent proceedings.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–PCX–2002–05) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7293 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45396 (February 5, 2002), 67 FR 6569.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45595; File No. SR–PCX–2002–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to 30-Second ITS Commitment Expirations

March 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend PCXE Rule 7.66(b)(2)(F) to conform to the Seventeenth Amendment of the Intermarket Trading System (''ITS'') Plan, which provides for a 30-second commitment expiration period.[3]

The text of the proposed rule change is available upon request from Office of the Secretary, the PCX and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44903 (October 3, 2001), 66 FR 52159 (October 12, 2001) (order approving the Seventeenth Amendment of the ITS Plan). The ITS is a National Market System (''NMS'') plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983) (adopting the restated ITS Plan).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCXE Rule 7.66(b)(2)(F) to provide for a 30-second commitment expiration period for orders received through the ITS, consistent with the Seventeenth Amendment to the ITS Plan. The Exchange notes that the 30-second commitment expiration period is a six-month pilot program under the ITS Plan that commenced on January 7, 2002 and would remain available until the last trading day of the sixth full calendar month following such commencement.

Presently, PCXE Rule 7.66(b)(2)(F) provides that the sender of an ITS commitment may designate a time period during which a commitment will be irrevocable following acceptance by the system. The ITS Plan provides for three irrevocable time-period options consisting of 30-seconds (or ''T–30s''), one minute and two minutes. Accordingly, PCX proposes to replace the current rule text in PCXE Rule 7.66(b)(2)(F), which states that there are ''two'' irrevocable time-period options, with the word ''three'' thereby making the rule text consistent with the ITS Plan.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [4] of the Act in general, and furthers the objectives of section (b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,[6] it has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–2002–07 and should be submitted by April 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7294 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] On January 29, 2002, the PCX submitted a draft proposal and asked the Commission to consider the proposal pursuant to section 19(b)(3)(A) of Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b–4(f)(6). The Commission has agreed to accept the draft proposal as satisfying the 5-day pre-filing requirement pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45606; File No. SR–PCX–2002–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

March 20, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2002, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the PCX has prepared. 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 PCX is proposing to change its marketing fee for certain options and to declare a marketing fee for recently listed options. A copy of the proposed new schedule of fees is available at the PCX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The PCX recently adopted a payment-for-order-flow program under which it charges a marketing fee ranging from $0 to $1.00 per contract on a per-issue basis.[3] The PCX segregates the funds from this fee by trading post and makes the funds available to LMMs for their use in attracting orders in the options traded at the posts. The PCX charges the marketing fees as set forth in the Schedule of Rates.

The PCX is proposing to change the marketing fee for certain options and to adopt new marketing fees for newly listed options beginning at the commencement of the March 2002 trade month and continuing until further notice. The PCX proposes to change the amounts of the fees that it charges for transactions in the options that are included in the proposed Schedule of Rates. Only the amount of the fee is being changed. Any fees currently being charged for transactions in options that are not listed in this amendment to the Schedule of Rates would not be affected by the proposed rule change. The PCX believes that its proposed rule change is reasonable and equitable because it is designed to enable it to compete with other markets in attracting options business.

Basis

The Exchange believes that the proposal is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

[3] *See* Securities Act Release No. 44830 (September 21, 2001), 66 FR 49728 (September 28, 2001) (SR–PCX–2001–37).

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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 PCX 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

Because the PCX has designated the foregoing as a fee change pursuant to section 19(b)(3)(A) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] the proposal has become effective immediately upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–14 and should be submitted by April 17, 2002.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7328 Filed 3–26–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3955]

Office of the Coordinator for Counterterrorism; Designation Under Executive Orders

AGENCY: Department of State.

ACTION: Designation under Executive Orders 13224 and 12947.

Pursuant under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Pursuant to section 1(a)(ii)(A) of the Executive Order 12947 of January 23, 1995, the Deputy Secretary of State, acting under the authority delegated to him by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, has determined, that the Al-Aqsa Martyrs Brigade (also known as the Al-Aqsa Martyrs Battalion) has committed, or poses a serious risk of committing, acts of violence that have the purpose or effect of disrupting the Middle East Peace Process.

Dated: March 25, 2002.

Mark Wong,

Acting Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7492 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 3952]

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of Foreign Terrorist Organizations.

Pursuant to section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), the Secretary of State hereby designates, effective March 27, 2002, the following organizations as foreign terrorist organizations:

Al-Aqsa Martyrs Brigade also known as the Al-Aqsa Martyrs Battalion

Asbat al-Ansar

Salafist Group for Call and Combat also known as the Salafist Group for Preaching and Combat also known as GSPC also known as Groupe Salafiste pour la Prédication et le Combat

Dated: March 19, 2002.

Francis X. Taylor,

Ambassador, Coordinator for Counterterrorism, Department of State.

[FR Doc. 02–7212 Filed 3–26–02; 5:00 pm]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative (USTR) has determined that Ghana has adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents in connection with shipments of textile and apparel articles and has implemented and follows, or is making substantial progress toward implementing and following, the customs procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Ghana qualify for the textile and apparel benefits provided under the AGOA.

DATES: Effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Moore, Director for African Affairs, Office of the United States Trade Representative, (202) 395–9514.

SUPPLEMENTARY INFORMATION: The AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–

200) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under the AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries (1) have adopted an effective visa system and related procedures to prevent unlawful transshipment and the use of counterfeit documents, and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures that assist the Customs Service in verifying the origin of the products.

In Proclamation 7350 (Oct. 2, 2000), the President designated Ghana as a ''beneficiary sub-Saharan African country.'' Proclamation 7350 delegated to the United States Trade Representative the authority to determine whether designated countries have met the two requirements described above. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement them through modifications of the Harmonized Tariff Schedule of the United States (HTS). Based on actions that Ghana has taken, I have determined that Ghana has satisfied these two requirements.

Accordingly, pursuant to the authority vested in the USTR by Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS and U.S. note 1 to subchapter XIX of chapter 98 of the HTS are each modified by inserting ''Ghana'' in alphabetical sequence in the list of countries. The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Importers claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See Visa Requirements Under the African Growth and Opportunity Act*, 66 FR 7837 (2001).

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–7374 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

United States-European Free Trade Association Mutual Recognition Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The United States is considering a proposal to negotiate a mutual recognition agreement (MRA) with European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—*i.e.*, Norway, Iceland, and Liechtenstein. Such an agreement would parallel the provisions of the 1998 U.S.–EU MRA, but would be restricted to sectoral annexes on telecommunications equipment, electromagnetic compatibility (EMC) and recreational craft. The Office of the United States Trade Representative (USTR) seeks public comment on the desirability of negotiating a mutual recognition agreement in these sectors with EFTA EEA.

DATES: Comments should be submitted no later than Friday, May 3, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC 20508, tel: (202) 395–3475. All other questions should be addressed to Jim Sanford, Director for European Affairs at (202) 395–3320; or Jason Buntin, Director for EFTA Affairs at (202) 395–4620.

SUPPLEMENTARY INFORMATION: Since 1995, the European Free Trade Association (EFTA) countries who are part of the European Economic Area (EEA)—i.e., Norway, Iceland, and Liechtenstein—have requested that the United States negotiate a mutual recognition agreement (MRA) that would parallel the agreement concluded between the United States and the European Community (EC) in 1998. The United States has indicated that it would continue to review EFTA's interest in an MRA as implementation of the U.S.–EU MRA proceeded. Now that the U.S.–EU MRA sectoral annexes on telecommunications equipment, EMC and recreational craft are fully operational, the United States is in a position to consider an MRA with EFTA EEA in these sectors. The possible addition of other sectors in the future will be considered in the context of agency priorities and the availability of agency resources.

In 1994, the Agreement on the European Economic Area (EEA) created a single market ensuring free circulation of goods, persons, capital and services among the 15 EU Member States and the three EFTA EEA states. Norway, Iceland, and Liechtenstein, are integrated into the European Community Single Market and thereby apply the internal market legislation (acquis communautaire). This ensures that the EEA EFTA States and their economic operators are subject to the same rights and obligations as their counterparts in the Community, and that a product placed on the market in accordance with the EU technical requirements freely circulates within the EEA. Therefore, U.S. products marketed according to EC requirements also automatically comply with the requirements of the EEA EFTA States.

An agreement between the United States and the EEA EFTA States would ensure U.S. producers direct market access to the EFTA part of the Community's Single Market. In effect, an MRA with EFTA EEA would extend the benefits of selected annexes of the U.S.–EU MRA to the markets of Norway, Iceland, and Liechtenstein.

US–EU MRA: In December 1998, the United States and the EU began implementation of the U.S.–EU Mutual Recognition Agreement. The U.S.–EU MRA is designed to facilitate trade, while maintaining our current high levels of health and safety protection. Once fully implemented, this MRA will permit U.S. exporters to conduct required conformity assessment procedures (*e.g.*, product tests, inspections, and certifications) in the United States according to EU requirements, and vice versa. The sectoral annexes of the U.S.–EU MRA cover the following products and associated conformity assessment procedures: (1) Telecommunications and information technology equipment; (2) network and electromagnetic compatibility (EMC) for electrical products; (3) electrical safety for electrical products; (4) good manufacturing practices (GMP) for pharmaceutical products; (5) product assessment for certain medical devices and quality systems-related inspections for most medical devices; (6) and safety of recreational craft. Each sectoral annex contains specific provisions with respect to the products and associated conformity assessment procedures covered in the annex.

Currently, three sectoral annexes of the U.S.–EU MRA are fully operational (telecommunications equipment, EMC

and recreational craft). The U.S.–EU mutual recognition agreement annexes on telecommunications equipment covers telecommunications terminal equipment, including radio transmitters and information technology equipment. The annex on electromagnetic compatibility (EMC) covers equipment subject to EU and U.S. radio interference and compatibility requirements, including radios and VCRs imported into the United States and most electrical and electronic equipment exported to the EU. The recreational craft annex covers the safety certification of small boats.

PUBLIC COMMENTS: USTR invites written comments from interested persons on the desirability of negotiating an MRA with EFTA covering the sectors of telecommunications equipment, electromagnetic compatibility, and recreational craft. Comments are invited in particular on: (a) The benefits for pursuing an MRA covering these sectors; and (b) any specific issues regarding an MRA covering any of the sectors. All submissions must be in English and should conform to the information requirements of 15 CFR part 2003. Comments should state clearly the position taken and should describe the specific information (including data, if possible) supporting that position.

All written comments should be addressed to: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

Written comments, requests, or other information submitted in connection with this request, except information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 3, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof, in the form specified above. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–7373 Filed 3–26–02; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of Trade Agreements Act

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was orginally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Procurement Thresholds Under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

SUMMARY: Executive Order 12260 requires the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*), which implements U.S. obligations under the World Trade Organization Government Procurement Agreement (GPA) and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above the specified U.S. dollar thresholds. The U.S. Trade Representative has determined that, for the calendar years 2002–2003, the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities listed in U.S. Annex 1

(1) Procurement of goods and services—$169,000.

(2) Procurement of construction services—$6,481,000.

B. Sub-Central Government Entities listed in U.S. Annex 2

(1) Procurement of goods and services—$460,000.

(2) Procurement of construction services—$6,481,000.

C. Other Entities listed in U.S. Annex 3

(1) Procurement of goods and services—$518,000.

(2) Procurement of construction services—$6,481,000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities listed in the U.S. schedule to Annex 1001.1a–1

(1) Procurement of goods and services—$56,190.

(2) Procurement of construction services—$7,304,733.

B. Government Enterprises listed in the U.S. schedule to Annex 1001.1a–2

(1) Procurement of goods and services—$280,951.

(2) Procurement of construction services—$8,990,862.

FOR FURTHER INFORMATION CONTACT: Questions relating to the implementation of NAFTA Chapter 10 may be directed to Karissa Kovner, USTR Director for International Procurement Negotiations (202/395–3063), Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20508.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–4120 Filed 2–20–02; 8:45 am]

BILLING CODE 3190–01–P

Editorial Note: Due to numerous errors, this document is being reprinted in its entirety. It was orginally printed in the **Federal Register** on Thursday, February 21, 2002 at 67 FR 8057.

[FR Doc. R2–4120 Filed 3–26–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Highway Administration

Environmental Impact Statement: Orange, Polk, and Hillsborough Counties in Florida

AGENCIES: Federal Railroad Administration (FRA) and Federal Highway Administration (FHWA), DOT.

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

SUMMARY: The FRA and FHWA are issuing this notice to advise the public that the agencies will prepare an environmental impact statement (EIS) for a proposed Florida High Speed Rail project between Orlando and Tampa, Florida.

FOR MORE INFORMATION CONTACT: David Valenstein, Environmental Program Manager, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington DC 20590, (202) 493–6368 and/or George Hadley, Environmental Programs Coordinator,

Federal Highway Administration, 227 North Bronough Street, Tallahassee, Florida 32301, (850) 942–9650 extension 3011.

SUPPLEMENTARY INFORMATION: The FRA and FHWA in cooperation with the Florida High Speed Rail Authority, will prepare an EIS for a proposal being considered by the Authority to construct a high speed rail project between Orlando, and Tampa, Florida. The project would be approximately 90 miles long. The proposed project may include acquisition of right of way and construction of guide way structures and track, stations, park and ride lots, storage and maintenance facilities, and other ancillary facilities. The facilities would be build to allow trains to operate at speeds in excess of 120 miles per hour. The proposed high speed rail system would provide a new mode of intercity travel to link major metropolitan areas and interface with airports, mass transit and highways to provide added capacity to meet increases in intercity travel demand in a manner sensitive to, and protective of Florida's unique natural resources.

Alternatives under consideration include: (1) The ''no build alternative''; (2) build alternatives in a variety of corridors between Orlando and Tampa; and, (3) a variety of high speed rail technology. The corridor alternatives traverse areas where various social, economical, and environmental resources and issues are believed to exist. The social, economical and environmental resources and issues may include but are not limited to: community and neighborhood, noise, wetlands, cultural resources, water quality, safety, residential and business relocations, wildlife and habitat, land use planning, parklands, economic, and floodplains.

Notice 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 expressed an interest in this proposal. The Federal agencies and The Authority will hold interagency and public meetings and public hearings in several locations in the project area. Information on the time and place of the public meetings and hearings will be provided in the appropriate local news media. There are plans to hold a scoping meeting on April 30, 2002 in the Orlando/Tampa, Florida area.

Comments and suggestions are invited from all interested parties to insure the full range of issues related to the proposed action and alternatives are addressed and all significant issues are identified. Comments and questions concerning the proposed action should be directed to the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 19, 2002.

James E. St. John,

FHWA Division Administrator, Tallahassee, Florida.

[FR Doc. 02–7278 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–6285]

Parts and Accessories Necessary for Safe Operation; Renewal of Fuel Tank Exemptions for Vehicles Manufactured by the General Motors Corporation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the General Motors Corporation (GM) for exemptions for the vehicles specified in this notice. Those exemptions are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Renewal of the exemptions enables motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by GM which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the exemptions have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that renewing the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments as well as see the submissions of other commenters at *http://dms.dot.gov.* Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgment page that appears after you submit comments electronically.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

GM's Application for Exemptions

GM applied for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On December 20, 1999 (64 FR 71186), the Federal Highway Administration (FHWA) published a notice of intent to grant GM's applications. The FHWA requested public comment on GM's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on April 26, 2000 (65 FR 24531). In that notice (at 65 FR 24532–24533), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are

capable of receiving fuel at a rate of approximately 10 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable rules in '' § 393.67, respectively.

On December 27, 2001 (66 FR 66972) the FMCSA announced its intent to renew GM's exemption. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to renew the exemptions because the commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket since April 26, 2000, the date the original exemption was granted, indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27, 2001, notice for another two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with gross vehicle weight ratings over 10,000 pounds. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid for two years from the date of approval, unless revoked earlier by the FMCSA. GM, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the original exemption, the motor carriers operating these vehicles are not required to maintain documentation concerning the exemption because the vehicles have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs contain either a ''J'' or a ''K'' in the forth position of the VIN. In addition, the seventh position of the VINs on the G-Van would contain a ''1.''

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7362 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–99–5867]

Parts and Accessories Necessary for Safe Operation; Fuel Tank Exemptions for Vehicles Manufactured by the Ford Motor Company

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of applications for exemptions.

SUMMARY: The FMCSA is granting the application from the Ford Motor Company (Ford) for exemptions for the vehicles specified in this notice. The exemptions sought are from certain fuel tank design and certification labeling requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). These exemptions enable motor carriers to continue operating commercial motor vehicles (CMVs) manufactured by Ford which are equipped with fuel tanks that do not meet the FMCSA's requirements that fuel tanks be capable of receiving fuel at a rate of at least 20 gallons per minute and be labeled or marked by the manufacturer to certify compliance with the design criteria. The FMCSA believes the terms and conditions of the current exemptions for similarly-equipped Ford CMVs have ensured a level of safety that is equivalent to the level of safety that would be achieved by complying with the regulations, and that granting the exemptions would not adversely affect highway safety. The exemptions continue to preempt inconsistent State and local requirements applicable to interstate commerce.

DATES: The exemptions are effective on March 27, 2002. The exemptions expire on March 29, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments that were submitted to this docket in response to the previous notice by using the universal resource locator (URL) *http://dms.dot.gov,* and by requesting the docket referenced at the beginning of this notice. You can examine and copy this document and all comments received at the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001 from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

Background

Ford's Applications for Exemptions

Ford first applied in April 1999, for exemptions from 49 CFR 393.67(c)(7)(ii), which requires that certain fuel tank systems on CMVs be designed to permit a fill rate of at least 20 gallons (75.7 liters) per minute, and 49 CFR 393.67(f)(2) and (f)(3), which require that liquid fuel tanks be marked with the manufacturer's name and a certification that the tank conforms to all applicable rules in § 393.67, respectively.

On August 10, 1999 (64 FR 43417), the Federal Highway Administration (FHWA) published a notice of intent to grant Ford's applications. The FHWA requested public comment on Ford's applications and the agency's safety analysis, and presented other relevant information known to the agency. After considering all the comments received, the agency granted the exemptions on December 20, 1999 (64 FR 71184). In that notice (at 64 FR 71185), the agency noted that the 20 gallon per minute rate referenced in the FMCSA's regulations, while appropriate for diesel fuel-powered vehicles, mandates that fill pipes on gasoline-powered vehicles be capable of receiving fuel at twice the maximum rate gasoline pumps are designed to dispense fuel. The vehicles in question are gasoline-fueled and are capable of receiving fuel at a rate of 17 gallons per minute.

The exemptions covered § 393.67(c)(7)(ii), Construction of liquid fuel tanks; fill pipe, and § 393.67(f)(2) and (f)(3)(ii) which require that liquid fuel tanks be marked with the manufacturer's name, and a certification that the tank conforms to all applicable

rules in § 393.67, respectively. The exemptions were granted for two years.

On November 2, 2001, (66 FR 55727) the FMCSA published a notice of its intent to renew these exemptions. The FMCSA received one comment, from Ford. Ford requested that the FMCSA renew its exemption for the fuel tanks covered in that notice. On December 27, 2001 (66 FR 66970), the agency published a notice granting the application for renewing these exemptions.

In its comment to the November 2, 2001, notice, Ford also advised the agency that it sought additional exemptions to cover the fuel tanks of additional models of E-series vehicles that were not in production at the time of the original 1999 petition, and for certain F-series vehicles.

In a second notice, also published December 27, 2001 (66 FR 66971), the FMCSA announced its intent to grant exemptions for these additional vehicles. The FMCSA received no comments to that notice.

FMCSA Decision

The FMCSA has decided to grant the exemptions for the additional Ford vehicles specified in the second December 27, 2001, notice. The commercial motor vehicles covered by the exemptions are still in operation, and the agency is not aware of any information, anecdotal or otherwise, that would suggest that the level of safety for the exempted vehicles is not equivalent to the level of safety that would have been achieved if the vehicles complied with §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii). No interested parties have submitted comments to the docket indicating that any aspects of the exemptions have had an adverse effect on highway safety. Accordingly, the agency is granting the exemptions that were the subject of the December 27 notice for a two-year period.

Terms and Conditions for the Exemption

The FMCSA is continuing to provide exemptions to §§ 393.67(c)(7)(ii), 393.67(f)(2), and 393.67(f)(3)(ii) for motor carriers operating the Ford vehicles specified in the next paragraph. The exemptions are effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(1) and are valid until March 29, 2004, unless revoked earlier by the FMCSA. Ford, or any of the affected motor carriers, may apply to the FMCSA for another renewal of the exemption. The exemption continues to preempt inconsistent State or local requirements applicable to interstate commerce.

As with the other exemption granted to Ford, the motor carriers operating these vehicles would not be required to maintain documentation concerning the exemption because the vehicles and fuel tanks have markings that would enable enforcement officials to identify them. The vehicles covered by the exemptions can be identified by their vehicle identification numbers (VINs). The VINs for the additional E-series vehicles contain E35 or E55 codes in the fifth, sixth, and seventh positions. The fuel tanks are marked with Ford part numbers F3UA–9002–G*, F3UA–9002–H*, F4UA–9002–V*, F4UA–9002–X*, F5UA–9002–V*, F5UA–9002–X*, F6UA–9002–Y*, F6UA–9002–Z*, F7UA–9002–C*, F7UA–9002D*, YC25–9002–D* (a new fuel tank for E37 series vehicles), or 2C24–9002–E* (a new fuel tank for E55 series vehicles) where the asterisk (*) represents a ''wild card'' character (any character of the alphabet). The VINs for the F-series vehicles contain an F53 code in the fifth, sixth, and seventh positions. The fuel tanks are marked with part numbers 1C34–9K007–F*, 1C34–9K007–G*, and 1C34–9K007–H* where the asterisk (*) represents a ''wild card'' character (any character of the alphabet).

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: March 22, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–7363 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements (ICRs) for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 28, 2002.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0533.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Deal at *dian.deal@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii)

the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of the currently approved ICRs that FRA will submit for clearance by OMB as required under the PRA:

Title: Qualifications For Locomotive Engineers.

OMB Control Number: 2130–0533.

Abstract: Section 4 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), later amended and re-codified by Public Law 103–272, 108 Stat. 874 (July 5, 1994), required that FRA issue regulations to establish any necessary program for certifying or licensing locomotive engineers. The collection of information is used by FRA to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers. The collection of information is also used by FRA to verify that railroads have established required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion; annually; tri-annually.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.9—Waivers	685 railroads	5 waivers	1 hour	5	$170
240.101/103—Certification Prog	685 railroads	10 programs	200 hours/40 hours	1,840	62,560
240.101/103—Cert. Prog.—Final Rev	685 railroads	10 reviews	1 hour	10	340
240.105(a)—Selection Criteria for DSLEs.	685 railroads	10 reports	1 hour	10	490
240.105(b)—DSLE Approval Plan—Amendments.	685 railroads	75 amendments	1 hour	75	2,550
240.111—Duty to Furnish Data on Prior Safety Conduct—Car Drvr.	685 railroads	400 calls	10 minutes	67	3,149
240.1111—Driver's License Data	13,333 candidates	13,333 requests	15 minutes	3,333	156,651
240.111/App. C—RR Notification to candidate—NDR Match.	685 railroads	267 requests	30 minutes	134	5,427
240.111(g)—Notice to RR of Absence of License.	40,000 candidates	4 letters	15 minutes	1	47
240.111/App. C—Written Response from candidate on Driver's Lic Data.	685 railroads	40 comments	15 minutes	10	470
240.113—Notice to RR Furnishing Data on Prior Safety Conduct—Diff. RR.	13,333 candidates	534 requests/resp	15 min./30 min	200	7,671
240.115—Candidate's Comments on Prior Saf. Conduct Data.	13,333 candidates	133 responses	30 minutes	67	3,149
240.117—Criteria—Oper. Rules Compl. Data.	685 railroads	3 violations/appeals	12 hours	36	1,764
240.121—Criteria—Vision/Hearing Acuity Data—New Railroads.	10 railroads	10 copies	15 minutes	3	102
240.121—Criteria—Vision/Hearing Acuity Data—Cond. Certification.	685 railroads	17 reports	1 hour	17	578
240.121—Criteria—Vision/Hearing Acuity Data—Not Meeting Standards.	685 railroads	10 notifications	15 minutes	3	141
240.201/221—List of Certified Loco. Engineers.	685 railroads	685 updates	15 minutes	171	5,814
240.201/221—List of Qualified DSLEs	685 railroads	685 updates	15 minutes	171	5,814
240.201/223/301—Loco. Engineers Certificate.	40,000 candidates	13,333 certificates	5 minutes	1,111	37,774
240.201/223—List of Des. Persons Authorized to Sign DSLE Certificate.	685 railroads	20 lists	15 minutes	5	170
240.205—Data to EAP Counselor	685 railroads	267 records	5 minutes	22	1,034
240.207—Medical Certificate	40,000 candidates	13,333 certificates	70 minutes	15,555	528,870
240.209/213—Written Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.211/213—Perf. Test	40,000 candidates	13,333 tests	2 hours	26,666	906,644
240.215—Record Keeping—Loc. Eng	685 railroads	13,333 records	10 minutes	2,222	75,548
240.219—Denial of Certification	13,333 candidates	150 letters/resp.	1 hour	150	6,075
240.219—Denial of Certification—Notices.	685 railroads	75 notifications	1 hour	75	2,550
240.227—Canadian Certification Data	Canadian railroads	200 certifications	15 minutes	50	1,700

REPORTING BURDEN—Continued

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
240.229—Requirement For Joint Operations Territory.	685 railroads	184 calls	5 minutes	15	705
240.303—Annual Op. Monitoring Obs ..	40,000 candidates	40,000 tests	2 hours	80,000	3,920,000
240.303—Annual Operational Observ ..	40,000 candidates	40,000 tests	1 hour	40,000	1,960,000
240.305—Eng. Notification of Non-Qualification.	40,000 candidates	10 notifications	5 minutes	1	47
240.305—Engineer Notice of Loss of Qualification.	40,000 candidates	2 letters	30 minutes	1	47
240.307—Rev. of Certification—Notice of Eng. Disqualification.	685 railroads	500 letters	1 hour	500	17,000
240.309—RR Oversight Resp.—RR Annual Review.	42 railroads	42 reviews	80 hours	3,360	188,160
240.309—RR Oversight Resp	15 railroads	10 annotations	15 minutes	3	147
240.401—Engineer Appeal to FRA	40,000 Engineers	97 petitions	12 hours	1,164	54,708
240.405—RR's Response to Appeal	685 railroads	97 responses	6 hours	582	28,518
240.407—Request For a Hearing	685 railroads and 40,000 Engineers.	16 Hearing requests ..	30 minutes	8	376
240.411—Appeals	685 railroads and 40,000 Engineers.	2 Appeal notices	2 hours	4	94

Total Responses: 164,568.

Estimated Total Annual Burden: 204,313 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on March 19, 2002.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 02–7351 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petitions for Waivers of Compliance

In accordance with Title 49 Code of Federal Regulations (CFR) § 211.41, and 49 U.S.C. 20103, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal railroad safety regulations. See also 49 CFR 211.7 and 211.9. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being sought.

North County Transit District

[Docket Number FRA–2002–11809]

The North County Transit District (''NCTD''), located in Oceanside, California, seeks a permanent waiver of compliance from certain CFR Parts of Title 49, specifically: Part 210, Railroad Noise Emission Compliance Regulations; Part 217, Railroad Operating Rules; Part 218, Railroad Operating Practices; Part 219, Control of Alcohol and Drug Use; Part 221, Rear End Marking Devices—Passenger, Commuter and Freight Trains; Part 223, Safety Gazing Standards—Locomotives, Passenger Cars and Cabooses; Part 225, Railroad Accidents/Incidents: Report Classification, and Investigations; Part 229, Railroad Locomotive Safety Standards; Part 231 Railroad Safety Appliance Standards; Part 238, Passenger Equipment Safety Standards; Part 239, Passenger Train Emergency Preparedness; and Part 240, Qualification and Certification of Locomotive Engineers.

NCTD seeks approval of shared track usage and waiver of certain FRA regulations involving planned light rail passenger operations on the same track with freight trains between Oceanside, CA and Escondido, CA (Oceanside-Escondido Rail Project). FRA will have jurisdiction over the 22-mile portion of the NCTD Oceanside-Escondido Rail Project that is also used for freight rail carrier service. The freight operator is The Burlington Northern and Santa Fe Railway Company (BNSF), and BNSF currently conducts operations over this trackage. NCTD proposes to operate light rail vehicles on the same track as BNSF freight trains, but under temporal separation. See *Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment*, 65 FR 42529 (July 10, 2000). See also *Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

Since FRA has not yet completed its investigation of NCTD's petition, the agency takes no position at this time on the merits of NCTD's stated justifications. As part of FRA's review of the petition, the Federal Transit Administration will appoint a representative to advise FRA's Safety Board, and that person will participate in the board's consideration of NCTD's waiver petition.

All communications concerning these proceedings should identify the appropriate docket number (Docket Number FRA 2002–11809) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza level) 400 Seventh Street, SW., Washington, DC 20590. All documents in the public docket, including NCTD's detailed waiver request, are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.* Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered to the extent

practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above-referenced facility.

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. 02–7353 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Southern Indiana Railway, Inc.

[Waiver Petition Docket Number FRA–2002–11669]

Southern Indiana Railway, Inc. of Sellersburg, Indiana seeks a permanent waiver of compliance from the requirements of 49 CFR part 223 (Safety Glazing Standards) for two diesel-electric locomotives, SIND 103 and SIND 104. The subjects of this petition are Model S–3 locomotives built by American Locomotive Company (Alco) in 1950.

These locomotives are used on five (5) miles of single track through mostly rural or lightly populated areas, interchanging with CSX and the Louisville and Indiana Railroad. Southern Indiana Railway reports that they have never had an employee injury due to broken locomotive glazing and have no history of previous glazing related accidents or injuries. They describe the current glazing as single pane safety plate glass in good condition.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number, (e.g., Waiver Petition Docket Number FRA–2002–11669) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, D.C. 20590. Communications received within 45 days from the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on March 19, 2002.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 02–7354 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2001–9972 Formerly FRA Docket No. 87–2; Notice No. 14]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendments to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts-Extension of Massachusetts Bay Transit Authority (MBTA) and CSX Transportation (CSXT) Temporary Operating Protocols.

SUMMARY: FRA makes two amendments to its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES). In these amendments, FRA extends previously granted exceptions that allowed MBTA and CSXT to follow temporary operating protocols. For both MBTA and CSXT, the exceptions now run until July 1, 2002, to allow MBTA time to complete equipping its locomotives as required for ACSES service, and to allow CSXT time to complete testing of Amtrak-supplied software.

DATES: The amendments to the Order are effective March 27, 2002.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW, Washington, DC 20590 ((202) 493–6038).

For instructions on how to use this system, visit the Docket Management System Web site (*www.dms.dot.gov*) and click on the ''Help'' menu. This docket is also available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001, during regular business hours.

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability (Order), as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) on the NEC—North End to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In six subsequent notices, FRA amended the Order to reset the implementation schedule and make technical changes. 64 FR 54410, October 6, 1999; 65 FR 62795, October 19, 2000; 66 FR 1718, January 9, 2001; 66 FR 34512, June 28, 2001; 66 FR 57771, November 16, 2001; and 67 FR 6753, February 12, 2002.

Background

FRA is making the amendments to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified.

FRA is not reopening the comment period since the amendments to this Order are necessary to avoid disruption of rail service. Under these circumstances, delaying the effective date of the amendments to allow for notice and comment would be impracticable, unnecessary, and contrary to the public interest.

Extension of MBTA Temporary Operating Protocols

This is the latest in a series of amendments that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. MBTA has had repeated difficulties in equipping sufficient locomotives with ACSES by the timetable specified in the Order. It is FRA's understanding, however, that Amtrak and MBTA have reached an agreement on what is needed for MBTA to complete equipment of its locomotive fleet for ACSES service.

Amtrak and MBTA agree that 40 MBTA locomotives must be equipped with an FM–8 ACSES configuration. MBTA currently has more than 40 ACSES-equipped locomotives, but only 24 of these have an FM–8 configuration. MBTA has the materials to equip its remaining 16 ACSES-equipped locomotives with an FM–8 configuration, but estimates that it will need four days to equip each locomotive, including transit time. Using this estimate, MBTA has asked for a final extension of the temporary protocols to allow it time to complete equipment of its fleet of ACSES-equipped locomotives. FRA is pleased that Amtrak and MBTA now agree on equipment needs, and will therefore grant MBTA a last extension to use the temporary operating protocols until July 1, 2002. Other than the final extension granted above, the MBTA temporary operating protocols specified in Notice No. 11 (66 FR 34512, June 28, 2001) remain in effect without change.

Extension of CSXT Temporary Operating Protocols

On June 28, 2001, in Notice No. 11, FRA granted CSXT a relief period from the implementation schedule specified in the Order. FRA has extended this relief period several times to allow CSXT time to test new Amtrak operational software. FRA is extending the date by which CSXT must complete software testing to July 1, 2002 since Amtrak is continuing to make adjustments to its new operational software.

Other than the extension for software testing explained above, the CSXT temporary operating protocols specified in Notice No. 11 remain in effect without change.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability published at 63 FR 39343, July 22, 1998 (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. Paragraph 11 is amended as follows:

11. Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

3. *Paragraph 12 is amended to read as follows:*

12. CSX Transportation (CSXT) Temporary Operating Protocols

(a) Effective upon March 27, 2002 until July 1, 2002, CSXT must adhere to the following protocols if it becomes necessary to dispatch a CSXT train from its initial terminal with inoperative onboard ACSES equipment:

* * * * *

Issued in Washington, DC, on March 15, 2002.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 02–7352 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2002–11911]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35001 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on December 27, 2001.

DATES: Comments must be submitted before April 26, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: 49 U.S.C. Section 5335(a) and (b) National Transit Database (*OMB Number: 2132–0008*)

Abstract: 49 U.S.C. Section 5335(a) and (b) require the Secretary of Transportation to maintain a reporting system by uniform categories to accumulate mass transportation financial and operating information and a uniform system of accounts and records. Each year, transit authorities that receive FTA funding submit data to the National Transit Database. The data that is submitted is used in statutory formulae to apportion over $4 billion in federal funds back to those agencies. In addition, federal, state, and local government, transit agencies/boards, labor unions, manufacturers, researchers, consultants and universities use the National Transit Database for making transit related decisions. State and local governments also use the National Transit Database in allocating funds under 49 U.S.C. Section 5307. National Transit Database information is essential for understanding cost, ridership and other national performance trends, including transit's share of urban travel. It would be difficult to determine the future structure of FTA programs, to set policy, and to make funding and other decisions relating to the efficiency and effectiveness of the Nation's transit operations without the National Transit Database.

Estimated Total Annual Burden: 238,136 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information

on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: March 22, 2002.

Timothy B. Wolgast,

Deputy Associate Administrator for Administration.

[FR Doc. 02–7365 Filed 3–26–02; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34060]

Midwest Generation, LLC—Exemption From 49 U.S.C. 10901—for Construction in Will County, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of conditional grant of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 the construction by Midwest Generation, LLC (Midwest) of a line of railroad, approximately 4,007 feet long, to serve its coal-fired generating plant in Joliet, Will County, IL.[1]

DATES: The exemption is subject to our further consideration of the anticipated environmental impacts of the proposal and will not become effective until the environmental review process is completed. The Board will then issue a further decision addressing the environmental issues and establishing an effective date for the exemption, if warranted, subject to any necessary conditions. Petitions to reopen must be filed by April 16, 2002.

ADDRESSES: Send pleadings, referring to STB Finance Docket No. 34060, to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; (2) Michael F. McBride, LeBoeuf, Lamb, Greene & MacRae, LLP, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728 (Midwest counsel); and (3) Paul A. Cunningham, Harkins Cunningham, 801 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20004–2664 (IC counsel).

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da–2–Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20006. Telephone: (202) 293–7776. [TDD for the hearing impaired: 1–800–877–8339.]

Board decisions and notices are available at our Web site at *www.stb.dot.gov.*

Decided: March 20, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7244 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34117]

Pemiscot County Port Authority—Construction of a Line of Railroad in Pemiscot County, MO

AGENCY: Surface Transportation Board.

ACTION: Notice of ruling on fee waiver.

SUMMARY: The Surface Transportation Board (Board) grants an appeal of the denial of a fee waiver request, but reaffirms that henceforth it will narrowly apply its rule providing for a waiver of filing fees for state and local government entities, as originally intended.

DATES: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Vernon A. Williams, (202) 565–1650 [TDD/TTY for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: This decision addresses an appeal of a Board order denying a request for waiver of a filing fee. Under the law, the Board is required to assess fees upon parties filing pleadings seeking to engage the Board's processes. The fees that the Board charges were established by the Board's predecessor, the Interstate Commerce Commission (ICC), in *Regulations Governing Fees for Services*, 1 I.C.C.2d 60 (1984), and they have been amended on various occasions.

The Board's fee program is described fully in 49 CFR 1002.2. Under the provisions of 49 CFR 1002.2(e)(1), a government entity may request a waiver of the otherwise applicable filing fee. In *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—Policy Statement*, STB Ex Parte No. 542 (Sub-No. 6) (STB served Dec. 6, 2000) (*Policy Statement*), the Board reviewed how the government-entity fee waiver provision had been used by ''state or local government entit[ies] acting in a proprietary capacity as [carriers]'' (*id.* at 3), specifically citing cases in which ''states, state agencies and local transportation authorities and districts have submitted filings to acquire rail lines, usually for operation by a third party.'' *Id.* The Board expressed the view that, in the past, waivers had been too readily issued, and emphasized that, for the future, it would closely adhere to the strict guidelines established by the ICC in determining whether to grant a waiver. In particular, the Board stated (*id.* at 4, emphasis in original) that ''fees will be assessed to *any entity* (a state or local governmental entity, a quasi-governmental entity, or a government-subsidized transportation company) that owns or proposes to own a carrier, * * * and comes before the Board in that capacity.''

In this case, Pemiscot County Port Authority (Pemiscot) filed a request with the Office of the Secretary for waiver of the $51,500 filing fee required in connection with a petition for a construction exemption under 49 U.S.C. 10502. Because Pemiscot would be seeking authority to construct and operate (through a third party operator) a line of railroad, by letter dated December 10, 2001, Pemiscot's request for waiver of the fee was denied. On March 8, 2002, Pemiscot submitted an untimely appeal, which we will accept for filing, of the decision denying the fee waiver request. In its appeal, Pemiscot argues that even though it will retain a residual common carrier obligation if it contracts with a third party to operate the proposed line, the project that it wants to pursue would ''convey[] a public benefit, * * * the project would not exist but for public funding, and * * * the transaction does not entail any effort to gain an advantage over another party.'' Pemiscot also argues that a waiver is in the best interest of the public and that denial of the waiver would impose an undue hardship on it.

Pemiscot has clearly not shown that the denial of its waiver request was erroneous, and indeed, the decision follows closely the guidelines laid out in the *Policy Statement.* Nevertheless, because a party in a different case was granted a fee waiver after issuance of the *Policy Statement* under circumstances not substantially different from those prevailing here, we will grant

[1] On June 19, 2001, Midwest filed a petition under 49 U.S.C. 10901(d) to require the Illinois Central Railroad Company (IC) to allow Midwest's proposed construction to cross IC's track. The proceeding is docketed as STB Finance Docket No. 34060 (Sub-No. 1), *Midwest Generation, LLC—Petition for Line Crossing Authority Under 40 U.S.C. 10901(d).* The crossing proceeding remains pending.

Pemiscot's appeal and waive the filing fee that should be required in this case. However, in the future, we will construe the waiver provision narrowly, as we said we would do in the *Policy Statement.*

Decided: March 21, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7339 Filed 3–26–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–49–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–49–88 (TD 8546), Limitations on Corporate Net Operating Loss (§ 1.382–6).

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Corporate Net Operating Loss.

OMB Number: 1545–1381.

Regulation Project Number: CO–49–88.

Abstract: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after ownership change under section 382 of the Internal Revenue Code, including an election to make the allocation based on a closing of the books as of the change date.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 0.1 hr.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7348 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–N

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–N, U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

DATES: Written comments should be received on or before May 28, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

OMB Number: 1545–1776.

Form Number: 1041–N.

Abstract: An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 231 hours.

Estimated Total Annual Burden Hours: 4,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7349 Filed 3–26–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0094.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–4169 is used to gather the necessary information to determine from certain applicants service information, place of residence, evidence held by the applicant to prove service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. The information collected is used in determining eligibility for benefits based on Commonwealth Army or recognized guerrilla service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 6, 2001, at page 35700.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: March 15, 2002.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–7311 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0101.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0101'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S.

c. Old Law Eligibility Verification Report (Surviving Spouse), VA Form 21–0511S–1.

d. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V.

e. Old Law Eligibility Verification Report (Veteran), VA Form 21–0511V–1.

f. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S.

g. Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

h. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V.

i. Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

j. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513.

k. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

l. DIC Parent's Eligibility Verification Report, VA Form 21–0514.

m. DIC Parent's Eligibility Verification Report, VA Form 21–0514–1.

n. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516.

o. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Form 21–0516–1.

p. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517.

q. Improved Pension Eligibility Verification Report (Veteran With Children), VA Form 21–0517–1.

r. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518.

s. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Form 21–0518–1.

t. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C.

u. Improved Pension Eligibility Verification Report (Child or Children), VA Form 21–0519C–1.

v. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S.

w. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Form 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: The Eligibility Verification Reports are used to report changes in entitlement factors in VA's income-based benefit programs, pension and parents' Dependency and Indemnity Compensation (DIC). Any individual who has applied for or receives pension or parents' DIC must promptly notify VA in writing of any changes in entitlement factors.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 23, 2001, at pages 58782–58783.

Affected Public: Individuals or households.

Estimated Annual Burden: 146,947 hours.

Estimated Average Burden Per Respondent: 30 minutes per report.

Frequency of Response: On occasion.

Estimated Number of Respondents: 293,894.

Dated: March 7, 2002.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 02–7312 Filed 3–26–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
March 27, 2002

Part II

Department of Health and Human Services

45 CFR Parts 160 and 164
Office of the Secretary; Standards for Privacy of Individually Identifiable Health Information; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB14

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office for Civil Rights, HHS.

ACTION: Proposed rule; modification.

SUMMARY: The Department of Health and Human Services (HHS) proposes to modify certain standards in the Rule entitled ''Standards for Privacy of Individually Identifiable Health Information'' (the ''Privacy Rule''). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

The purpose of this action is to propose changes that maintain strong protections for the privacy of individually identifiable health information while clarifying misinterpretations, addressing the unintended negative effects of the Privacy Rule on health care quality or access to health care, and relieving unintended administrative burden created by the Privacy Rule.

DATES: To assure consideration, written comments mailed to the Department as provided below must be postmarked no later than April 26, 2002, and written comments hand delivered to the Department and comments submitted electronically must be received as provided below, no later than 5 p.m. on April 26, 2002.

ADDRESSES: Comments will be considered only if provided through any of the following means:

1. Mail written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

2. Deliver written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

3. Submit electronic comments at the following Web site: *http://www.hhs.gov/ocr/hipaa/.*

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies, and electronic access.

FOR FURTHER INFORMATION CONTACT: Felicia Farmer 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

SUPPLEMENTARY INFORMATION: Comment procedures, availability of copies, and electronic access.

Comment Procedures: All comments should include the full name, address, and telephone number of the sender or a knowledgeable point of contact. Comments should address only those sections of the Privacy Rule for which modifications are being proposed or for which comments are requested. Comments on other sections of the Privacy Rule will not be considered, except insofar as they pertain to the standards for which modifications are proposed or for which comments are requested. Each specific comment should specify the section of the Privacy Rule to which it pertains.

Written comments should include 1 original and, if possible, 3 copies and an electronic version of the comments on a 3½ inch DOS format floppy disk in HTML, ASCII text, or popular word processor format (Microsoft Word, Corel WordPerfect). All comments and content must be limited to the 8.5 inches wide by 11.0 inches high vertical (also referred to as ''portrait'') page orientation. Additionally, if identical/duplicate comment submissions are submitted both electronically at the specified Web site and in paper form, the Department requests that each submission clearly indicate that it is a duplicate submission.

Because of staffing and resource limitations, the Department will not accept comments by telephone or facsimile (FAX) transmission. Any comments received through such media will be deleted or destroyed, as appropriate, and not be considered as public comments. The Department will accept electronic comments only as submitted through the Web site identified in the **ADDRESSES** section above. No other form of electronic mail will be accepted or considered as public comment. In addition, when mailing written comments, the public is encouraged to submit comments as early as possible due to potential delays in mail service.

Inspection of Public Comments: Comments that are timely received in proper form and at one of the addresses specified above will be available for public inspection by appointment as they are received, generally beginning approximately three weeks after publication of this document, at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 4 p.m. Appointments may be made by telephoning 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

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Electronic Access: This document is available electronically at the OCR Privacy Web site at *http://www.hhs.gov/ocr/hipaa/,* as well as at the Web site of the Government Printing Office at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

I. Background

A. Statutory Background

Congress recognized the importance of protecting the privacy of health information given the rapid evolution of health information systems in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which became law on August 21, 1996. HIPAA's Administrative Simplification provisions, sections 261 through 264 of the statute, were designed to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers who transmit information electronically in connection with such transactions. To implement these provisions, the statute directed HHS to adopt a suite of uniform, national standards for transactions, unique health identifiers, code sets for the data elements of the transactions, security of health information, and electronic signature.

At the same time, Congress recognized the challenges to the

confidentiality of health information presented by the increasing complexity of the health care industry, and by advances in the health information systems technology and communications. Thus, the Administrative Simplification provisions of HIPAA authorized the Secretary to promulgate regulations on standards for the privacy of individually identifiable health information if Congress did not enact health care privacy legislation by August 21, 1999. HIPAA also required the Secretary of HHS to provide Congress with recommendations for protecting the confidentiality of health care information. The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress was unable to act within its self-imposed deadline.

With respect to these regulations, HIPAA provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections. Additionally, Congress required that HHS consult with the National Committee on Vital and Health Statistics, a Federal Advisory committee established pursuant to section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and the Attorney General in the development of HIPAA privacy standards.

After a set of standards is adopted by the Department, HIPAA provides HHS with authority to modify the standards as deemed appropriate, but not more frequently than once every 12 months. However, modifications are permitted during the first year after adoption of the standard if the changes are necessary to permit compliance with the standard. HIPAA also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which may not be earlier than 180 days from the adoption of the modification.

B. Regulatory and Other Actions to Date

As Congress did not enact legislation regarding the privacy of individually identifiable health information prior to August 21, 1999, HHS published a proposed Rule setting forth such standards on November 3, 1999 (64 FR 59918). The Department received more than 52,000 public comments in response to the proposal. After reviewing and considering the public comments, HHS issued a final Rule (65 FR 82462) on December 28, 2000, establishing ''Standards for Privacy of Individually Identifiable Health Information'' (''Privacy Rule'').

In an era where consumers are increasingly concerned about the privacy of their personal information, the Privacy Rule creates for the first time national protections for the privacy of their most sensitive information—health information. Congress has passed other laws to protect consumer's personal information contained in bank, credit card, other financial records, and even video rentals. These health privacy protections are intended to provide consumers with similar assurances that their health information, including genetic information, will be properly protected. Under the Privacy Rule, health plans, health care clearinghouses, and certain health care providers must guard against misuse of individuals' identifiable health information and limit the sharing of such information, and consumers are afforded significant new rights to understand and control how their health information is used and disclosed.

After publication of the Privacy Rule, HHS received many inquiries and unsolicited comments through telephone calls, e-mails, letters, and other contacts about the impact and operation of the Privacy Rule on numerous sectors of the health care industry. Many of these commenters exhibited substantial confusion over how the Privacy Rule will operate; others expressed great concern over the complexity of the Privacy Rule. In response to these communications and to ensure that the provisions of the Privacy Rule would protect patients' privacy without creating unanticipated consequences that might harm patients' access to health care or quality of health care, the Secretary of HHS requested comment on the Privacy Rule in March 2001 (66 FR 12738). After an expedited review of the comments by the Department, the Secretary decided that it was appropriate for the Privacy Rule to become effective on April 14, 2001, as scheduled (65 FR 12433). At the same time, the Secretary directed the Department immediately to begin the process of developing guidelines on how the Privacy Rule should be implemented and to clarify the impact of the Privacy Rule on health care activities. In addition, the Secretary charged the Department with proposing appropriate changes to the Privacy Rule during the next year to clarify the requirements and correct potential problems that could threaten access to, or quality of, health care. The comments received during the comment period, as well as other communications from the public and all sectors of the health care industry, including letters, testimony at public hearings, and meetings requested by these parties, have helped to inform the Department's efforts to develop proposed modifications and guidance on the Privacy Rule.

On July 6, 2001, the Department issued its first guidance to answer common questions and clarify certain of the Privacy Rule's provisions. In the guidance, the Department also committed to proposing modifications to the Privacy Rule to address problems arising from unintended effects of the Privacy Rule on health care delivery and access. The guidance is available on the HHS Office for Civil Rights (OCR) Privacy Web site at *http://www.hhs.gov/ocr/hipaa/*.

II. Overview of the Proposed Rule

As described above, through public comments, testimony at public hearings, meetings at the request of industry and other stakeholders, as well as other communications, the Department learned of a number of concerns about the potential unintended effect certain provisions would have on health care delivery and access. In response to these concerns, and pursuant to HIPAA's provisions for modifications to the standards, the Department is proposing modifications to the Privacy Rule.

In addition, the National Committee for Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality, held public hearings on the implementation of the Privacy Rule on August 21–23, 2001, and January 24–25, 2002, and provided recommendations to the Department based on these hearings. The NCVHS serves as the statutory advisory body to the Secretary of HHS with respect to the development and implementation of the Rules required by the Administrative Simplification provisions of HIPAA, including the privacy standards. Through the hearings, the NCVHS specifically solicited public input on issues related to certain key standards in the Privacy Rule: consent, minimum necessary, marketing, fundraising, and research. The resultant public testimony and subsequent recommendations submitted to the Department by the NCVHS also served to inform the development of these proposed modifications.

Based on the information received through the various sources described above, the Department proposes to modify the following areas or provisions of the Privacy Rule: consent, including other provisions for uses and disclosures of protected health information for treatment, payment, and health care operations; notice of privacy

practices for protected health information; minimum necessary uses and disclosures, and oral communications; business associates; uses and disclosures for marketing; parents as the personal representatives of unemancipated minors; uses and disclosures for research purposes; uses and disclosures of protected health information for which authorizations are required; and de-identification of protected health information. In addition to these key areas, the proposal includes changes to certain other provisions where necessary to clarify the Privacy Rule. The Department also includes in the proposed Rule a list of technical corrections intended as editorial or typographical corrections to the Privacy Rule.

The proposed modifications collectively are designed to ensure that protections for patient privacy are implemented in a manner that maximizes the effectiveness of such protections while not compromising either the availability or the quality of medical care. They reflect a continuing commitment on the part of the Department to strong privacy protections for medical records and the belief that privacy is most effectively protected by requirements that are not exceptionally difficult to implement. If there are any ways in which privacy protections are unduly compromised by these modifications, the Department welcomes comments and suggestions for alternative ways effectively to protect patient privacy without adversely affecting access to, or the quality of, health care.

Given that the compliance date of the Privacy Rule for most covered entities is April 14, 2003, and statutory requirements to ensure that affected parties have sufficient time to come into compliance require any revisions to become effective by October 13, 2002, the Department is soliciting public comment on these proposed modifications for only 30 days. As stated above, the modifications address public concerns already communicated to the Department through a wide variety of sources since publication of the Privacy Rule in December 2000. For these reasons, the Department believes that 30 days should be sufficient for the public to state its views fully to the Department on the proposed modifications to the Privacy Rule.

III. Description of Proposed Modifications

A. Uses and Disclosures for Treatment, Payment, and Health Care Operations

1. Consent

Treatment and payment for health care are core functions of the health care industry, and uses and disclosures of individually identifiable health information for such purposes are critical to the effective operation of the health care system. Health care providers and health plans must also use individually identifiable health information for certain health care operations, such as administrative, financial, and legal activities, to run their businesses, and to support the essential health care functions of treatment and payment. Equally important are health care operations designed to maintain and improve the quality of health care. In developing the Privacy Rule, the Department considered the privacy implications of uses and disclosures for treatment, payment, and health care operations in connection with the need for these activities to continue. In balancing the need for these activities and the privacy interests involved in using and disclosing protected health information for these purposes, the Department considered the fact that many individuals expect that their health information will be used and disclosed as necessary to treat them, bill for treatment, and, to some extent, operate the covered entity's health care business. Due to individual expectations with respect to the use or disclosure of information for such activities and so as not to interfere with an individual's access to quality health care or efficient payment for such health care, the Department's goal is to permit these activities to occur with little or no restriction.

Consistent with this view, the Privacy Rule generally provides covered entities with permission to use and disclose protected health information as necessary for treatment, payment, and health care operations. For certain health care providers that have a direct treatment relationship with individuals, such as many physicians, hospitals, and pharmacies, the Privacy Rule requires such providers to obtain an individual's written consent prior to using or disclosing protected health information for these purposes.

To implement the consent standard, the Privacy Rule requires a covered health care provider with a direct treatment relationship with the individual to obtain a single, one-time, general permission from the individual prior to using or disclosing protected health information about him or her for treatment, payment, and health care operations. An individual may revoke his or her consent at any time, except to the extent that the covered entity has taken action in reliance on the consent. The Privacy Rule contains exceptions to the consent requirements, under which a provider may use or disclose protected health information without prior consent when there is an emergency treatment situation, when a provider is required by law to treat the individual, or when there are substantial communication barriers. Additionally, because the Department realizes that a health care provider cannot treat a patient without being able to use and disclose his or her protected health information for treatment purposes, the Privacy Rule permits a covered health care provider to refuse to treat a patient who refuses to provide consent. Finally, the Privacy Rule permits other covered entities to voluntarily obtain consent, in accordance with these consent provisions.

The consent requirement for health care providers with direct treatment relationships was a significant change from the Department's initial proposal published in November 1999. At that time, the Department proposed to permit all covered entities to use and disclose protected health information to carry out treatment, payment, and health care operations without any requirement that the covered entities obtain an individual's consent for such uses and disclosures, subject to a few limited exceptions. Further, the Department had proposed to prohibit covered entities from obtaining an individual's consent for uses and disclosures of protected health information for these purposes, unless required by other applicable law. Instead, the Department relied on the principle of fair notice, coupled with regulatory limits on the use and disclosure of health information, to balance the individual's privacy interests against the need not to impede the delivery of quality health care. Providing individuals with fair notice about the information practices and responsibilities of their plans and providers, and their rights with respect to information about them, is a privacy principle as important as the principle of consent. Indeed, consents often provide individuals with little actual control over information. When an individual is required to sign a blanket consent at the point of treatment as a condition of treatment or payment, that

consent is often not voluntary. Instead, therefore, the Department proposed to require most covered entities to create and provide to individuals a notice describing all of the entity's information practices, including their practices with respect to uses and disclosures of protected health information to carry out treatment, payment, and health care operations.

The Department received a strong public response opposing this proposal. Health care providers and patients argued that consent provides individuals with a sense of control over how their information will be used and disclosed, is a current practice of many health care providers, and is expected by patients. Providers explained that they would face an ethical conflict from a prohibition on obtaining consent. The consent requirement for direct treatment providers was a direct response to these comments.

Public Comments

The Department received many comments in March 2001, as well as recommendations from the NCVHS based on public testimony, about the consent provisions in the Privacy Rule. There were some proponents of consent that urged the Department to retain, expand, or strengthen the consent provisions. There were also many opponents of consent that raised a number of issues and serious concerns that the consent requirements will impede access to, and the delivery of, quality health care. Most significantly, many covered entities described an array of circumstances when they need to use or disclose protected health information for treatment, payment, or health care operations purposes prior to the initial face-to-face contact with the patient, and therefore, prior to obtaining consent.

Consistent with the comments that the Department received after the initial notice of proposed rulemaking (NPRM), proponents of the consent requirement argued that consent is integral to providing individuals the opportunity to be active participants in their own health care and can bolster patient trust in providers. One of the most significant values that proponents placed on consent was that it defines an ''initial moment'' when patients can focus on information practices and raise questions about privacy concerns. Some proponents recommended that the consent requirement be extended to health plans because these entities may not have the same duty and legal obligation as health care providers to maintain confidentiality.

Others urged the Department to strengthen consent by eliminating the ability of providers to condition treatment on the receipt of consent. There were also some commenters that thought that consent should be required more frequently. They claimed that the consent provisions will be ineffective to provide individuals with control over how their information will be used or disclosed because it is general and only must be obtained one time. They argued that an individual may have differing degrees of concern about the privacy of health information, depending on the nature of the information raised in the particular encounter with the provider, and that an initial, one-time consent cannot account for such variation.

At the same time, most covered entities were concerned about significant practical problems that resulted from the consent requirements in the Privacy Rule. Commenters raised numerous examples of obstacles that the prior consent provisions will pose to timely access to health care. Health care providers commented that they often use health information about an individual for necessary treatment, payment, and health care operations activities prior to the first face-to-face contact with the individual. Under the Privacy Rule, these routine and often essential activities are not permitted unless the provider first obtains consent from the individual. Although the consent only needs to be obtained one time, there may be problems for new patients who have not yet provided consent, for existing patients who have not yet provided consent after the compliance date of the Privacy Rule, for patients who have revoked consent, and for patients who may have provided consent, but the provider cannot find such documentation.

These concerns were primarily raised by pharmacists and pharmacies, but the same issue exists in any referral or new patient situation. Pharmacists informed us that they typically use individually identifiable health information, received from a physician, to fill a prescription, search for potential drug interactions, and determine eligibility and obtain authorization for payment, before the individual arrives at the pharmacy to pick up the prescription. The consent requirement would delay such activity for any first-time customers and for many more customers immediately following the compliance date of the Privacy Rule. Tracking consents in large, multi-state pharmacy chains can result in delays as well. At best, an individual will experience significant delays in obtaining his or her prescription if a pharmacist cannot fill the prescription until the individual is present to sign a consent. Even greater delays may be experienced by individuals too ill to pick up their own prescriptions. Although the Privacy Rule permits a friend or neighbor to pick up the prescription, that person may not have the legal authority to sign a consent on the individual's behalf. Thus, a number of trips back and forth to the pharmacy may be needed to obtain the prior consent. This problem is greatly magnified in rural areas, where persons may travel much longer distances to see health care providers, including pharmacists.

Similarly, a hospital receives information about a patient from a referring physician and routinely uses this information to schedule and prepare for procedures before the individual presents at the hospital for such procedure. The Privacy Rule's requirement that a covered entity obtain an individual's consent prior to using or disclosing their information is an impediment to these activities and could require an individual to make an additional trip to the hospital simply to provide consent. The Department did not intend that the Privacy Rule interfere with such activities.

Commenters also raised concerns that providers who do not provide treatment in person may be unable to provide care because they are unable to obtain prior written consent to use protected health information at the first service delivery. This was a special concern with respect to providers who care for individuals over the telephone. For example, providers who cover for other providers during non-business hours or providers who had not yet had the opportunity to obtain a patient's consent were concerned that they would not be able to respond to telephone calls from individuals in need of treatment because they were not able to obtain consent over the telephone. Nurses who staff telephone centers that provide health care assessment and advice, but who never see patients, had similar concerns.

Other concerns related to treatment were expressed about the limitations of the exceptions to the consent requirement in the Privacy Rule. For example, emergency medical providers were unclear as to whether all activities in which they engage qualify for the emergency treatment exception to the consent requirement. As a result of this confusion, they were concerned that, if a situation was urgent, they would have to try to obtain consent to comply with the Privacy Rule even if that would be inconsistent with current practice of emergency medicine. These providers

also were concerned about the requirement that a provider must attempt to obtain consent as soon as reasonably practicable after an emergency. Emergency medical providers explained that they typically do not have ongoing relationships with individuals and that the requirement to attempt to obtain consent after the emergency would require significant efforts and administrative burden on their part, and would be viewed as harassment by individuals.

Providers who do not provide emergency care and who are not likely meet one of the consent exceptions were concerned that they may be put in the untenable position of having to decide whether to withhold treatment when an individual does not provide consent or proceed to use information to treat the individual in violation of the consent requirements.

Covered entities were also concerned that the difficultly in tracking consents may hamper treatment. The Privacy Rule permits an individual to revoke his or her consent. Large institutional providers claimed that, since tracking of patient consents and revocations would be very difficult and expensive, in practice, they would need to obtain consent for each patient encounter, rather than just one-time as allowed by the Privacy Rule. Covered entities were concerned that, if an individual revokes consent, they would have to eliminate all protected health information about that individual from their systems in order to ensure that it was not used inadvertently for routine health care operations purposes, which would hinder their quality improvement activities and other health care operations. Additionally, testimony before the NCVHS revealed a concern that the ability of a patient to revoke consent might prevent health care providers from accessing protected health information that is critical for the treatment of an individual in an emergency treatment situation where a new consent is not obtained.

The Department also heard many concerns about the transition provisions related to the use and disclosure of protected health information for treatment, payment, or health care operations. The Privacy Rule permits covered health care providers that are required to obtain consent for treatment, payment, or health care operations to continue, after the compliance date of the Privacy Rule, to use and disclose protected health information they created or received prior to the compliance date of the Privacy Rule for these purposes if they have obtained consent, authorization, or other express legal permission to use or disclose such information for any of these purposes, even if such permission does not meet the consent requirements under the Privacy Rule. Many providers informed the Department that they currently were not required to obtain consent for these purposes, that these transition provisions would result in significant operational problems, and the inability to access health records would have an adverse effect on quality activities.

Concerns also were raised regarding the exception to the consent requirement for cases where a provider is required by law to treat an individual. For example, providers that are required by law to treat were concerned about the mixed messages to patients and interference with the physician-patient relationship that would result when they are required to ask for consent to use or disclose protected health information for treatment, payment, or health care operations, but if the patient says ''no,'' they are permitted to use or disclose the information for such purposes anyway.

There also was confusion about the interaction of the consent provisions and the provisions regarding parents and minors. Testimony received by the NCVHS indicated uncertainty as to the validity of a consent signed by a parent for his or her minor child once the child reaches the age of majority. The NCVHS requested clarification regarding whether a child must sign a new consent upon reaching the age of majority.

The NCVHS hearings and recommendations focused on practical implementation issues, including the unintended consequences of the consent provisions, but did not address whether the Privacy Rule should or should not require consent. The NCVHS generally recommended that the Department consider circumstances in which protected health information could be used and disclosed without an individual's prior written consent and modify the Privacy Rule accordingly. The Committee specifically recommended that the Privacy Rule should be amended to include provisions for allowing covered entities to use and disclose protected health information prior to the initial face-to-face contact with an individual.

Proposed Modifications

The Department is concerned by the multitude of comments and examples demonstrating that the consent requirements result in unintended consequences that impede the provision of health care in many critical circumstances and that other such unintended consequences may exist which have yet to be brought to its attention. However, the Department understands that the opportunity to discuss privacy practices and concerns is an important component of privacy, and that the confidential relationship between a patient and a health care provider includes the patient's ability to be involved in discussions and decisions related to the use and disclosure of any protected health information about him or her.

Accordingly, the Department proposes an approach that protects privacy interests by affording patients the opportunity to engage in important discussions regarding the use and disclosure of their health information, while allowing activities that are essential to provide access to quality health care to occur unimpeded. Specifically, the Department proposes to make optional the obtaining of consent to use and disclose protected health information for treatment, payment, or health care operations on the part of all covered entities, including providers with direct treatment relationships. Under this proposal, health care providers with direct treatment relationships with individuals would no longer be required to obtain an individual's consent prior to using and disclosing information about him or her for treatment, payment, and health care operations. They, like other covered entities, would have regulatory permission for such uses and disclosures.

In order to preserve flexibility and the valuable aspects of the consent requirement, the Department proposes changes that would: (1) Permit all covered entities to obtain consent if they choose, (2) strengthen the notice requirements to preserve the opportunity for individuals to discuss privacy practices and concerns with providers, and (3) enhance the flexibility of the consent process for those covered entities that choose to obtain consent. See section III.B. of the preamble below for the related discussion of proposed modifications to the Privacy Rule's notice requirements.

Other individual rights would not be affected by this proposal. Although covered entities would not be required to obtain an individual's consent, any uses or disclosures of protected health information for treatment, payment, or health care operations would still need to be consistent with the covered entity's notice of privacy practices. Also, the removal of the consent requirement only applies to consent for treatment, payment, and health care operations; it does not alter the

requirement to obtain an authorization under § 164.508 for uses and disclosures of protected health information not otherwise permitted by the Privacy Rule. The functions of treatment, payment, and health care operations were all given carefully limited definitions in the Privacy Rule, and the Department intends to enforce strictly the requirement for obtaining an individual's authorization, in accordance with § 164.508, for uses and disclosure of protected health information for other purposes not otherwise permitted or required by the Privacy Rule. Furthermore, individuals would retain the right to request restrictions, in accordance with § 164.522(a).

Although consent for use and disclosure of protected health information for treatment, payment, and health care operations would no longer be mandated, the Department is proposing to allow covered entities to have a consent process if they wish to do so. The Department heard from some commenters that obtaining consent was an integral part of the ethical and other practice standards for many health care professionals. The Department, therefore, would not prohibit covered entities from obtaining consent.

Under this proposal, a consent could apply only to uses and disclosures that are otherwise permitted by the Privacy Rule. A consent obtained through this voluntary process would not be sufficient to permit a use or disclosure which, under the Privacy Rule, requires an authorization or is otherwise expressly conditioned. For example, a consent could not be obtained in lieu of an authorization or a waiver of authorization by an IRB or Privacy Board to disclose protected health information for research purposes.

The Department proposes to allow covered entities that choose to have a consent process complete discretion in designing this process. The comments have informed the Department that one consent process and one set of principles will likely be unworkable. As a result, these proposed standards would leave complete flexibility to each covered entity. Covered entities that chose to obtain consent could rely on industry practices to design a voluntary consent process that works best for their practice area and consumers.

To effectuate these changes to the consent standard, the Department proposes to replace the consent provisions in § 164.506 with a new provision at § 164.506(a) that would provide regulatory permission for covered entities to use or disclose protected health information for treatment, payment, and health care operations, and a new provision at § 164.506(b) that would allow covered entities to obtain consent if they choose to, and make clear that such consent may not permit a use or disclosure of protected health information not otherwise permitted or required by the Privacy Rule. Additionally, the Department proposes a number of conforming modifications throughout the Privacy Rule to accommodate the proposed approach. The most substantive corresponding changes are proposed at §§ 164.502 and 164.532. Section 164.502(a)(1) provides a list of the permissible uses and disclosures of protected health information, and refers to the corresponding section of the Privacy Rule for the detailed requirements. The Department collapses the provisions at §§ 164.502(a)(1)(ii) and (iii) that address uses and disclosures of protected health information for treatment, payment, and health care operations and modifies the language to eliminate the consent requirement for these purposes.

Section 164.532 consists of the transition provisions. In § 164.532, the Department deletes references to § 164.506 and to consent, authorization, or other express legal permission obtained for uses and disclosures of protected health information for treatment, payment, and health care operations prior to the compliance date of the Privacy Rule. The proposal to permit a covered entity to use or disclose protected health information for these purposes without consent or authorization would apply to any protected health information held by a covered entity whether created or received before or after the compliance date. Therefore, transition provisions would not be necessary.

The Department also proposes conforming changes to the definition of ''more stringent'' in § 160.202, § 164.500(b)(1)(v), §§ 164.508(a)(2)(i) and (b)(3)(i), the introductory text of §§ 164.510 and 164.512, the title of § 164.512, and § 164.520(b)(1)(ii)(B) to reflect that consent is no longer required.

2. Disclosures for Treatment, Payment, or Health Care Operations of Another Entity

The Privacy Rule permits a covered entity to use and disclose protected health information for treatment, payment, or health care operations (subject to a consent in some cases). Uses and disclosures for treatment are broad because the definition of treatment incorporates the interaction among more than one entity; specifically, coordination and management of health care among health care providers or by a health care provider with a third party, consultations between health care providers, and referrals of a patient for health care from one health care provider to another. As a result, covered entities are permitted to disclose protected health information for treatment regardless of to whom the disclosure is made, as well as to disclose protected health information for the treatment activities of another health care provider.

However, for payment and health care operations, the Privacy Rule generally limits a covered entity's uses and disclosures of protected health information to those that are necessary for its own payment and health care operations activities. This limitation is explicitly stated in the preamble discussions in the Privacy Rule of the definitions of ''payment'' and ''health care operations.'' The Privacy Rule also provides that a covered entity must obtain authorization to disclose protected health information for the payment or health care operations of another entity. The Department intended these requirements to be consistent with individuals' privacy expectations. See §§ 164.506(a)(5) and 164.508(e).

Public Comments

A number of commenters raised specific concerns with the restriction that a covered entity is permitted to use and disclose protected health information only for its own payment and health care operations activities. These commenters presented a number of examples where such a restriction would impede the ability of certain covered entities to obtain reimbursement for health care, to conduct certain quality assurance or improvement activities, such as accreditation, or to monitor fraud and abuse.

With regard to payment, the Department received specific concerns about the difficultly that the Privacy Rule will place on certain providers trying to obtain information needed for reimbursement for health care. Specifically, ambulance service providers explained that they normally receive the information they need to seek payment for treatment from the hospital emergency departments to which they transport their patients, since it is usually not possible at the time the service is rendered for the ambulance service provider to obtain such information directly from the individual. Nor is it practicable or

feasible in all cases for the hospital to obtain the individual's authorization to provide payment information to the ambulance service provider after the fact. This disclosure of protected health information from the hospital to the ambulance service provider is not permitted under the Privacy Rule without an authorization from the patient because it is a disclosure by the hospital for the payment activities of the ambulance service provider.

In addition, commenters stated that physicians and other covered entities outsource their billing, claims, and reimbursement functions to accounts receivable management companies. These collectors often attempt to recover payments from a patient for care rendered by multiple health care providers. Commenters were concerned that the Privacy Rule will prevent these collectors, as business associates of multiple providers, from using a patient's demographic information received from one provider in order to facilitate collection for another provider's payment purposes.

With regard to health care operations, the Department also received comments about the difficultly that the Privacy Rule will place on health plans trying to obtain information needed for quality assessment activities. Health plans informed the Department that they need to obtain individually identifiable health information from health care providers for the plans' own quality-related activities, accreditation, and performance measures, e.g., Health Plan Employer Data and Information Set (HEDIS). Commenters explained that the information provided to plans for payment purposes (e.g., claims or encounter information) may not be sufficient for quality assessment or accreditation purposes. Plans may receive even less information from their capitated providers.

The NCVHS also received specific public testimony with regard to this issue as part of public hearings held in August 2001. The NCVHS subsequently recommended to the Department that the Privacy Rule be amended to allow for uses and disclosures for quality-related activities among covered entities without individual written authorization.

Proposed Modifications

Based on concerns raised by comments, the Department proposes to modify § 164.506 to permit a covered entity to disclose protected health information for the payment activities of another covered entity or health care provider, and for certain health care operations of other covered entities. This proposal would broaden the uses and disclosures that are permitted as part of treatment, payment, and health care operations so as not to interfere inappropriately with access to quality and effective health care, while limiting this expansion in order to continue to protect the privacy expectations of individuals. It would be a limited expansion of the information that is allowed to flow between entities, without an authorization, as part of treatment, payment, and certain health care operations.

The Department proposes the following. First, the Department explicitly includes in § 164.506(c)(1) language stating that a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations without prior consent or authorization.

Second, in § 164.506(c)(2), the Department includes language to clarify its intent that a covered entity may share protected health information for the treatment activities of another health care provider. For example, a primary care provider, who is a covered entity under the Privacy Rule, may send a copy of an individual's medical record to a specialist who needs the information to treat the same individual. No authorization would be required.

Third, with respect to payment, the Department proposes, in § 164.506(c)(3), to explicitly permit a covered entity to disclose protected health information to another covered entity or health care provider for the payment activities of that entity. The Department recognizes that not all health care providers who need protected health information to obtain payment are covered entities, and therefore, proposes to allow disclosures of protected health information to both covered and non-covered health care providers. The Department is unaware of any similar barrier with respect to plans that are not covered under the Privacy Rule to obtain the protected health information they need for payment purposes, but solicits comment on whether such barriers exist. Therefore, the Department proposes to limit disclosures under this provision to those health plans that are covered by the Privacy Rule.

Fourth, in § 164.506(c)(4), the Department proposes to permit a covered entity to disclose protected health information about an individual to another covered entity for certain health care operations purposes of the covered entity that receives the information. The proposal would permit such disclosures only for the activities described in paragraphs (1) and (2) of the definition of ''health care operations,'' as well as for health care fraud and abuse detection and compliance programs (as provided for in paragraph (4) of the definition of ''health care operations''). The activities that fall into paragraphs (1) and (2) of the definition of ''health care operations'' include quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management, conducting training programs, and accreditation, certification, licensing, or credentialing activities. This provision is intended to allow information to flow from one covered entity to another for activities important to providing quality and effective health care.

The proposed expansion for permissible disclosures for health care operations without authorization is more limited than the permissible disclosures for treatment and payment in two ways. First, in contrast to treatment and payment, the proposal limits the types of health care operations that are covered by this expansion. The Department proposes this limitation because it recognizes that ''health care operations'' is a broad term and that individuals are less aware of the business-related activities that involve the use and disclosure of protected health information. In addition, many commenters and the NCVHS focused their comments on covered entities' needs to share protected health information for quality-related health care operations activities.

Second, in contrast to the treatment and payment provisions in this section, the proposal for disclosures of protected health information for health care operations of another entity limits disclosures to other covered entities. By limiting disclosure for such purposes to entities that are required to comply with the Privacy Rule, the protected health information would continue to be protected. The Department believes that this would create the appropriate balance between meeting an individual's privacy expectations and meeting a covered entity's need for information for quality-related health care operations.

These proposed modifications to allow disclosures for health care operations of another entity are permitted only to the extent that each entity has, or has had, a relationship with the individual who is the subject of the information being requested. Where the relationship between the individual and the covered entity has ended, a disclosure of protected health information about the individual only would be allowed if related to the past

relationship. The Department believes that this limitation is necessary in order to protect the privacy expectations of the individual. An individual should expect that two providers that are providing treatment to the individual, and the health plan that pays for the individual's health care, would have protected health information about the individual for health care operations purposes. However, an individual would not expect a health plan with which the individual has no relationship to be able to obtain identifiable information from his or her health care provider. Therefore, this proposed limitation would minimize the effect on privacy interests, while not interfering with covered entities' ability to continue to provide access to quality and effective health care.

These provisions do not eliminate a covered entity's responsibility to apply the Privacy Rule's minimum necessary provisions to both the disclosure of and request for information for payment and health care operations purposes. In addition, the Department continues to strongly encourage the use of de-identified information wherever feasible.

The Department, however, is aware that the above proposal could pose barriers to disclosures for quality-related health care operations to plans and health care providers that are not covered entities, or to entities that do not have a relationship with the individual. For example, the proposal could be a problem for hospitals that share aggregated but identifiable information with other hospitals for health care operations purposes, when the recipient hospital does not have a relationship with the individual who is the subject of the information being disclosed. While the Department believes the proposed modification strikes the right balance between privacy expectations and covered entities' need for information for such purposes, the Department is considering permitting the disclosure of information that is not facially identifiable for quality-related purposes, subject to a data use or similar agreement. This would permit uses and disclosures for such purposes of a limited data set that does not include facially identifiable information, but in which certain identifiers remain. The Department is requesting comment on whether this approach would strike a proper balance. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

Related to the above modifications, and in response to comments evidencing confusion on this matter, the Department proposes in § 164.506(c)(5) to make it clear that covered entities participating in an organized health care arrangement (OHCA) may share protected health information for the health care operations of the OHCA. The Privacy Rule allows legally separate covered entities that are integrated clinically or operationally to be considered an OHCA for purposes of the Privacy Rule if protected health information must be shared among the covered entities for the joint management and operations of the arrangement. See the definition of ''organized health care arrangement'' in § 164.501. Additionally, the Privacy Rule, in the definition of ''health care operations,'' permits the sharing of protected health information in an OHCA for such activities. The Department proposes to remove the language regarding OHCAs from the definition of ''health care operations'' as unnecessary because such language now would appear in § 164.506(c)(5).

In addition, the Department proposes a conforming change to delete the word ''covered'' in paragraph (1)(i) of the definition of ''payment.'' This change would be necessary because the proposal would permit disclosures to non-covered providers for their payment activities.

B. Notice of Privacy Practices for Protected Health Information

The Privacy Rule requires most covered entities to provide individuals with adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights, and the covered entity's responsibilities, with respect to protected health information. See § 164.520. Content requirements for the notice are specified in the Privacy Rule. There are also specific requirements, which vary based on the type of covered entity, for providing such notice to individuals.

For example, a covered health care provider that has a direct treatment relationship with an individual must provide the notice by the date of the first service delivery and, if such provider maintains a physical service delivery site, must post the notice in a clear and prominent location. In addition, whenever the notice is revised, the provider must make the notice available upon request. If the covered provider maintains a website, the notice must also be available electronically on the web site. If the first service delivery to an individual is electronic, the covered provider must furnish electronic notice automatically and contemporaneously in response to the individual's first request for service.

Proposed Modifications

In order to preserve some of the most important benefits of the consent requirement, the Department proposes to modify the notice requirements at § 164.520(c)(2) to require that a covered health care provider with a direct treatment relationship make a good faith effort to obtain an individual's written acknowledgment of receipt of the provider's notice of privacy practices. Other covered entities, such as health plans, would not be required to obtain this acknowledgment from individuals, but could do so if they chose.

The Department believes that promoting individuals' understanding of privacy practices is an essential component of providing notice to individuals. In addition, the Department believes it is just good business practice to provide individuals with fair notice about how their information will be used, disclosed, and protected. This proposal would strengthen the notice process by incorporating into the notice process the ''initial moment'' between a covered health care provider and an individual, where individuals may focus on information practices and privacy rights and discuss any concerns related to the privacy of their protected health information. This express acknowledgment would also provide the opportunity for an individual to make a request for additional restrictions on the use or disclosure of his or her protected health information or for additional confidential treatment of communications, as permitted under § 164.522.

The Department intends the proposed notice acknowledgment requirement to be simple and not impose a significant burden on either the covered health care provider or the individual. First, the requirement for good faith efforts to obtain a written acknowledgment only applies to covered providers with direct treatment relationships. This is the same group of covered entities that would have been required to obtain consent under the Privacy Rule. The Department believes that these are the covered entities that have the most direct relationships with individuals, and therefore, the entities for which the requirement will provide the greatest privacy benefit to individuals with the least burden to covered entities.

Second, the Department designed the timing of the proposed good faith acknowledgment requirement to limit the burden on covered entities by generally making it consistent with the

timing for notice distribution. Therefore, with one exception, a covered health care provider would be required to make good faith efforts to obtain a written acknowledgment of the notice at the time of first service delivery—the same time that the notice must be provided. The Department understands, however, that providing notice and obtaining an acknowledgment is not practicable during emergency treatment situations. In these situations, the Department proposes in § 164.520(c)(2) to delay the requirement for provision of notice until reasonably practicable after the emergency treatment situation, and exempt health care providers from having to make a good faith effort to obtain the acknowledgment in emergency treatment situations.

Third, the proposal does not prescribe in detail the form the acknowledgment must take. Rather, the Department proposes to require only that the acknowledgment be in writing, and intends to allow each covered health care provider to choose the form and other details of the acknowledgment that are best suited to the entity's practices and that will not pose an impediment to the delivery of timely, quality health care. While the Department believes that requiring the individual's signature is preferable because an individual is likely to pay more attention or more carefully read a document that he or she signs, the proposal does not require an individual's signature on the notice. An acknowledgment under this proposed modification also may be obtained, for example, by having the individual sign a separate list or simply initial a cover sheet of the notice to be retained by the covered entity. The proposal would not limit the manner in which a covered entity obtains the individual's acknowledgment of receipt of the notice.

Most importantly, the proposed modification would require only the good faith effort of the provider to obtain the individual's acknowledgment. The Department understands that an individual may refuse to sign or otherwise fail to provide his or her acknowledgment. Unlike the Privacy Rule's consent requirement, an individual's failure or refusal to acknowledge the notice, despite a covered entity's good faith efforts to obtain such signature, would not interfere with the provider's ability to deliver timely and effective treatment. Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, would not be considered a violation of the Privacy Rule. Compliance with this requirement would be achieved in a particular case if the provider with a direct treatment relationship either: (1) Obtained a written acknowledgment, or (2) made a good faith effort to obtain such acknowledgment and documented such efforts and the reason for failure. Such reason for failure simply may be, for example, that the individual refused to sign after being requested to do so. In addition to the individual's failure or refusal to acknowledge receipt of the notice, this proposed provision is intended to allow covered health care providers flexibility to deal with a variety of circumstances in which obtaining an acknowledgment is problematic.

The requirement for a good faith effort to obtain the individual's acknowledgment would apply, except in emergency treatment situations, to the provision of notice on the first delivery of service, regardless of whether such service is provided in person or electronically. When electronic notice is provided as part of the first service delivery, the system should be capable of capturing the individual's acknowledgment of receipt electronically. The Department does not anticipate that a notification of receipt would be difficult or costly to design.

Documentation requirements under this proposal would be required to comply with the documentation requirements in § 164.530(j). In addition, nothing in the proposed requirements described above would relieve any covered entity from its duty to provide the notice in plain language so that the average reader can understand the notice. As stated in the preamble to the Privacy Rule, the Department encourages covered entities to consider alternative means of communicating with certain populations, such as with individuals who cannot read or who have limited English proficiency.

C. Minimum Necessary and Oral Communications

The Privacy Rule at § 164.502(b) generally requires covered entities to make reasonable efforts to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. Protected health information includes individually identifiable health information in any form, including information transmitted orally, or in written or electronic form. See the definition of ''protected health information'' at § 164.501. The minimum necessary standard is intended to make covered entities evaluate their practices and enhance protections as needed to limit unnecessary or inappropriate access to, and disclosures of, protected health information.

The Privacy Rule sets forth requirements at § 164.514(d) for implementing the minimum necessary standard with regard to a covered entity's uses, disclosures, and requests. Essentially, a covered entity is required to develop and implement policies and procedures appropriate to the entity's business practices and workforce that reasonably minimize the amount of protected health information used, disclosed, and requested; and, for uses of protected health information, that also limit who has access to such information. Specifically, for uses of protected health information, the policies and procedures must identify the persons or classes of persons within the covered entity who need access to the information to carry out their job duties, the categories or types of protected health information needed, and conditions appropriate to such access. For routine or recurring requests and disclosures, the policies and procedures may be standard protocols. Non-routine requests for and disclosures of protected health information must be reviewed individually.

With regard to disclosures, the Privacy Rule permits a covered entity to rely on the judgment of certain parties requesting the disclosure as to the minimum amount of information that is needed. For example, a covered entity is permitted to reasonably rely on representation from a public health official that the protected health information requested is the minimum necessary for a public health purpose. Similarly, a covered entity is permitted to reasonably rely on the judgment of another covered entity requesting a disclosure that the information requested is the minimum amount of information reasonably necessary to fulfill the purpose for which the request has been made. *See* § 164.514(d)(3)(iii).

The Privacy Rule contains some exceptions to the minimum necessary standard. The minimum necessary requirements do not apply to uses or disclosures that are required by law, disclosures made to the individual or pursuant to an authorization initiated by the individual, disclosures to or requests by a health care provider for treatment purposes, uses or disclosures that are required for compliance with the regulations implementing the other administrative simplification provisions of HIPAA, or disclosures to the Secretary of HHS for enforcement purposes. See § 164.502(b)(2).

The Department received much, varied commentary both on the minimum necessary provisions, as well as on the Privacy Rule's protections of oral communications. The following discussion addresses the concerns identified by commenters that were common to both the Privacy Rule's standards for minimum necessary as well as protecting oral communications, and describes the Department's proposal for modifying the Privacy Rule in response to these concerns. In addition, the Department proposes to modify certain other paragraphs within § 164.514(d) to clarify the Department's intent with respect to these provisions. The Department also discusses some of the other concerns that have been received, which the Department attempted to address in its July 6 guidance on the Privacy Rule. Lastly, the Department describes the recommendations provided to the Department by the NCVHS as a result of public testimony received on implementation of the minimum necessary standard, as well as the Department's response to these recommendations.

Public Comments—Incidental Uses and Disclosures

During the March 2001, comment period on the Privacy Rule, the Department received a number of comments raising concerns and questions as to whether the Privacy Rule's restrictions on uses and disclosures will prohibit covered entities from engaging in certain common and essential health care communications and practices in use today. Commenters were concerned that the Department is imposing through the Privacy Rule absolute, strict standards that would not allow for the incidental or unintentional disclosure that could occur as a by-product of engaging in these health care communications and practices. It was argued that the Privacy Rule will, in effect, prohibit such practices and, therefore, impede many activities and communications essential to effective and timely treatment of patients.

These concerns were raised both in the context of applying the Privacy Rule's protections to oral communications, as well as in implementing the minimum necessary standard. For example, with regard to oral communications, commenters expressed concern over whether health care providers may continue to engage in confidential conversations with other providers or with patients, if there were a possibility that they could be overheard. As examples, commenters specifically questioned whether health care staff can continue to: coordinate services at hospital nursing stations orally; discuss a patient's condition over the phone with the patient or another provider, if other people are nearby; discuss lab test results with a patient or other provider in a joint treatment area; call out a patient's name in a waiting room; or discuss a patient's condition during training rounds in an academic or training institution.

Many covered entities also expressed confusion and concern that the Privacy Rule will stifle or unnecessarily burden many of their current health care practices. For example, commenters questioned whether they will be prohibited from using sign-in sheets in waiting rooms or maintaining patient charts at bedside, or whether they will need to isolate X-ray lightboards or destroy empty prescription vials. These concerns seemed to stem from a perception that covered entities will be required to prevent any incidental disclosure such as those that may occur when a visiting family member or other person not authorized to access protected health information happens to walk by medical equipment or other material containing individually identifiable health information, or when individuals in a waiting room sign their name on a log sheet and glimpse the names of other patients.

Proposed Modifications—Incidental Uses and Disclosures

The Department, in its July 6 guidance, clarified that the Privacy Rule is not intended to impede customary and necessary health care communications or practices, nor to require that all risk of incidental use or disclosure be eliminated to satisfy its standards. So long as reasonable safeguards are employed, the burden of impeding such communications are not outweighed by any benefits that may accrue to individuals' privacy interests. The guidance assured that the Privacy Rule would be modified to clarify that such communications and practices may continue, if reasonable safeguards are taken to minimize the chance of incidental disclosure to others.

Accordingly, the Department proposes to modify the Privacy Rule to add a new provision at § 164.502(a)(1)(iii) which explicitly permits certain incidental uses and disclosures that occur as a result of an otherwise permitted use or disclosure under the Privacy Rule. An incidental use or disclosure would be a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure under the Privacy Rule. The Department proposes that an incidental use or disclosure be permissible only to the extent that the covered entity has applied reasonable safeguards as required by § 164.530(c), and implemented the minimum necessary standard, where applicable, as required by §§ 164.502(b) and 164.514(d).

Under this proposal, an incidental use or disclosure that occurs as a result of a failure to apply reasonable safeguards or the minimum necessary standard, as appropriate, is not a permissible use or disclosure and is, therefore, a violation of the Privacy Rule. For example, a covered entity that asks for a patient's health history on the waiting room sign-in sheet is not abiding by the minimum necessary requirements and, therefore, any incidental disclosure of such information that results from this practice would be an unlawful disclosure under the Privacy Rule.

Further, this proposed modification is not intended to excuse erroneous uses or disclosures or those that result from mistake or neglect. The Department would not consider such uses and disclosures to be incidental as they do not occur as a by-product of an otherwise permissible use or disclosure. For example, an impermissible disclosure would occur when a covered entity mistakenly sends protected health information via electronic mail to the wrong recipient or when protected health information is erroneously made accessible to others through the entity's web site.

Proposed Modifications to the Minimum Necessary Standard

Section 164.502(b)(2) sets forth the exceptions to the minimum necessary standard in the Privacy Rule. The Department proposes to separate § 164.502(b)(2)(ii) into two subparagraphs (§ 164.502(b)(2)(ii) and (iii)) to eliminate confusion regarding the exception to the minimum necessary standard for uses or disclosures made pursuant to an authorization under § 164.508 and those for disclosures made to the individual. Additionally, to conform to the proposal to eliminate the special authorizations required by the Privacy Rule at § 164.508(d), (e), and (f) (see section III.H for the relevant preamble discussion regarding authorization), the Department proposes to expand the exception for authorizations to apply generally to any authorization executed pursuant to § 164.508. Therefore, the proposal would exempt from the minimum necessary standard any uses or disclosures for which the covered entity

has received an authorization that meets the requirements of § 164.508.

The Privacy Rule at § 164.514(d) lists the standard and the specific requirements for implementing the minimum necessary standard. The Department proposes to modify § 164.514(d)(1) to delete the term ''reasonably ensure'' in response to concerns that the term connotes an absolute, strict standard and, therefore, is inconsistent with how the Department has described the minimum necessary requirements as being reasonable and flexible to the unique circumstances of the covered entity. In addition, the Department generally revises the language to be more consistent with the description of standards elsewhere in the Privacy Rule.

The Privacy Rule at § 164.514(d)(4) consists of the implementation specifications for applying the minimum necessary standard to a request for protected health information. The Department intended these provisions to be consistent with the requirements set forth in § 164.514(d)(3) for applying the minimum necessary standard to disclosures of protected health information, so that covered entities would be able to address requests and disclosures in a similar manner. However, with respect to requests not made on a routine and recurring basis, the Department omitted from § 164.514(d)(4) the requirement that a covered entity may implement this standard by developing criteria designed to limit its request for protected health information to the minimum necessary to accomplish the intended purpose. The Department proposes to add such a provision to make the implementation specifications for applying the minimum necessary standard to requests for protected health information by a covered entity more consistent with the implementation specifications for disclosures.

Other Comments on the Minimum Necessary Standard

In addition to the comments described above regarding incidental uses or disclosures, the Department received many other varied comments expressing both support of, and concerns about, the minimum necessary standard. The Department, in its July 6, 2001, guidance, attempted to address many of the commenters' concerns by clarifying the Department's intent with respect to the minimum necessary provisions. For example, many commenters expressed concerns about the costs and burden to covered entities in implementing the standard. A number of these commenters questioned whether they will be required to redesign office space or implement expensive upgrades to computer systems.

The Department's guidance emphasized that the minimum necessary standard is a reasonableness standard, intended to be flexible to account for the characteristics of the entity's business and workforce. The standard is not intended to override the professional judgment of the covered entity. The Department clarified that facility redesigns and expensive computer upgrades are not specifically required by the minimum necessary standard. Covered entities may, however, need to make certain adjustments to their facilities, as reasonable, to minimize access or provide additional security. For example, covered entities may decide to isolate and/or lock file cabinets or records rooms, or provide additional security, such as passwords, on computers that maintain protected health information.

A number of commenters, especially health care providers, also expressed concern that the minimum necessary restrictions on uses within the entity will jeopardize patient care and exacerbate medical errors by impeding access to information necessary for treatment purposes. These commenters urged the Department to expand the treatment exception to cover uses of protected health information within the entity. Other commenters urged the Department to exempt all uses and disclosures for treatment, payment, and health care operations purposes from the minimum necessary standard.

The Privacy Rule is not intended to impede access by health care professionals to information necessary for treatment purposes. As the Department explained in its guidance, a covered entity is permitted to develop policies and procedures that allow for the appropriate individuals within the entity to have access to protected health information, including entire medical records, as appropriate, so that those workforce members are able to provide timely and effective treatment.

With regard to payment and health care operations, the Department remains concerned, as stated in the preamble to the Privacy Rule, that, without the minimum necessary standard, covered entities may be tempted to disclose an entire medical record when only a few items of information are necessary, to avoid the administrative step of extracting or redacting information. The Department also believes that this standard will cause covered entities to assess their privacy practices, give the privacy interests of their patients and enrollees greater attention, and make improvements that might otherwise not be made. For these reasons, the Department continues to believe that the privacy benefits of retaining the minimum necessary standard for these purposes outweigh the burdens involved.

In addition, the NCVHS Subcommittee on Privacy and Confidentiality solicited public testimony on implementation of the minimum necessary standard of the Privacy Rule at its August 2001 public hearings. The testimony reflected a wide range of views, from those who commented that the Privacy Rule provides sufficient protections on individually identifiable health information without the minimum necessary standard, to those who expressed strong support for the standard as an integral part of the Privacy Rule. A number of panelists welcomed the flexibility of the standard, while others expressed concern that the vagueness of the standard might restrict the necessary flow of information, impede care, and lead to an increase in defensive information practices that would lead to the withholding of important information for fear of liability. Testimony also reflected differing views on the cost and administrative burden of implementing the standard. Some expressed much concern regarding the increased cost and burden, while others argued that the cost will be barely discernable.

The NCVHS developed recommendations on the minimum necessary standard based on the testimony and written comments provided at the hearings. In its recommendations, the NCVHS strongly reaffirmed the importance of the minimum necessary principle, but also generally recommended that HHS provide additional clarification and guidance to industry regarding the minimum necessary requirements to assist with effective implementation of these provisions, while allowing for the necessary flow of information and minimizing defensive information practices. While the NCVHS pointed out that many panelists at the hearing found the Department's July 6 guidance helpful in addressing questions about the minimum necessary standard, the Committee heard that many questions still remain within the industry. Therefore, the NCVHS specifically requested further guidance by the Department on the reasonable reliance provisions, and the requirement that covered entities develop policies and procedures for addressing routine uses

of information. In addition, the NCVHS recommended that the Department provide education to address the increasing concerns about liability and defensive information practices that may lessen the flow of information and impede care. The NCVHS generally recommended that the Department issue advisory opinions, publish best practices, and make available model policies, procedures, and forms to assist in alleviating the cost and administrative burden that will be incurred when developing policies and procedures as required by the minimum necessary provisions.

The Department agrees with the NCVHS about the need for further guidance on the minimum necessary standard and intends to issue further guidance to clarify issues causing confusion and concern in the industry, as well as provide additional technical assistance materials to help covered entities implement the provisions.

D. Business Associates

The Privacy Rule at § 164.502(e) permits a covered entity to disclose protected health information to a business associate who performs a function or activity on behalf of, or provides a service to the covered entity that involves the creation, use, or disclosure of, protected health information, provided that the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information. The Department recognizes that most covered entities do not perform or carry out all of their health care activities and functions by themselves, but rather acquire the services or assistance of a variety of other persons or entities. Given this framework, the Department intended these provisions to allow such business relationships to continue while ensuring that identifiable health information created or shared in the course of the relationships was protected.

The Privacy Rule requires that the satisfactory assurances obtained from the business associate be in the form of a written contract (or other written arrangement as between governmental entities) between the covered entity and the business associate that contains the elements specified at § 164.504(e). For example, the agreement must identify the uses and disclosures of protected health information the business associate is permitted or required to make, as well as require the business associate to put in place appropriate safeguards to protect against a use or disclosure not permitted by the contract or agreement.

The Privacy Rule also provides that, where a covered entity knows of a material breach or violation by the business associate of the contract or agreement, the covered entity is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, a covered entity then is required to report the problem to the Secretary of HHS. A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity will be in noncompliance with the Privacy Rule's business associate provisions.

The Privacy Rule's definition of ''business associate'' at § 160.103 includes some of the functions or activities, and all of the types of services, that make a person or entity who engages in them a business associate, if such activity or service involves protected health information. For example, a third party administrator (TPA) is a business associate of a health plan to the extent the TPA assists the health plan with claims processing or another covered function. Similarly, accounting services performed by an outside consultant give rise to a business associate relationship when provision of the service entails access to the protected health information held by a covered entity.

The Privacy Rule excepts from the business associate standard certain uses or disclosures of protected health information. That is, in certain situations, a covered entity is not required to have a contract or other written agreement in place before disclosing protected health information to a business associate or allowing protected health information to be created by the business associate on its behalf. Specifically, the standard does not apply to: disclosures by a covered entity to a health care provider for treatment purposes; disclosures to the plan sponsor by a group health plan, or a health insurance issuer or HMO with respect to a group health plan, to the extent that the requirements of § 164.504(f) apply and are met; or to the collection and sharing of protected health information by a health plan that is a public benefits program and an agency other than the agency administering the health plan, where the other agency collects protected health information for, or determines, eligibility or enrollment with respect to the government program, and where such activity is authorized by law. See § 164.502(e)(1)(ii).

Public Comments

The Department has received many comments on the business associate provisions of the Privacy Rule. The majority of commenters expressed some concern over the anticipated administrative burden and cost to implement the business associate provisions. Some commenters stated that covered entities might have existing contracts that are not set to terminate or expire until after the compliance date of the Privacy Rule. Many of these commenters expressed specific concern that the two-year compliance period does not provide enough time to reopen and renegotiate what could be hundreds or more contracts for large covered entities. A number of these commenters urged the Department to grandfather in existing contracts until such contracts come up for renewal instead of requiring that all contracts be in compliance with the business associate provisions by the compliance date of the Privacy Rule. In response to these comments, the Department intends to relieve some of the burden on covered entities in complying with the business associate provisions, both by proposing to grandfather certain existing contracts for a specified period of time, as well as publishing model contract language. These proposed changes are discussed below in this section under ''Proposed Modifications.''

In addition, commenters continued to express concern over a perceived liability imposed by the Privacy Rule that would essentially require that the covered entity monitor, and be responsible for, the actions of its business associates with respect to the privacy and safeguarding of protected health information. However, the Privacy Rule only requires that, where a covered entity knows of a pattern of activity or practice that constitutes a material breach or violation of the business associate's obligation under the contract, the covered entity take steps to cure the breach or end the violation. Accordingly, the Department, in its July 6 guidance, clarified that active monitoring of the actions of business associates is not required of covered entities, and more importantly, that covered entities are not responsible or liable for the actions of their business associates.

A number of commenters urged the Department to exempt covered entities from having to enter into contracts with business associates who are also covered entities under the Privacy Rule. The Department continues to believe, as stated in the preamble to the Privacy Rule, that a covered entity that is a

business associate should be restricted from using or disclosing the protected health information it creates or receives through its business associate function for any purposes other than those explicitly provided for in its contract. In addition, the contract serves to clarify the uses and disclosures made as, and the protected health information held by, the covered entity, versus those uses and disclosures made as, and the protected health information held by, the same entity as the business associate.

Many commenters continued to express concerns that requiring business associate contracts between health care providers in treatment situations would burden and impede quality care. The Department clarifies that the Privacy Rule does not require a contract for a covered entity to disclose protected health information to a health care provider for treatment purposes. In fact, such disclosures are explicitly excepted from the business associate requirements. *See* § 164.502(e)(1). For example, a hospital is not required to have business associate contracts with health care providers who have staff privileges at the institution in order for these entities to share protected health information for treatment purposes. Nor is a physician required to have a business associate contract with a laboratory as a condition of disclosing protected health information for the treatment of an individual.

Some commenters requested clarification as to whether business associate contracts were required between a health plan and the health care providers participating in the plan's network. Participation in a plan network in and of itself does not give rise to a business associate relationship to the extent that neither entity is performing functions or activities, or providing services to, the other entity. For example, each covered entity is acting on its own behalf when a provider submits a claim to a health plan, and when the health plan assesses and pays the claim. Discount payment arrangements do not require business associate relationships. However, this does not preclude a covered entity from establishing a business associate relationship with the health plan or another entity in the network for some other purpose. If the health plan and one or more of the providers participating in its network do perform covered functions on behalf of each other, a business associate agreement is required. For example, if one health care provider handles the billing activities of another health care provider in the same network, a business associate contract would be required before protected health information could be disclosed for this activity.

Proposed Modifications

The Department proposes new transition provisions at § 164.532(d) and (e) to allow covered entities, other than small health plans, to continue to operate under certain existing contracts with business associates for up to one year beyond the April 14, 2003, compliance date of the Privacy Rule. This modification is proposed in response to commenter concerns regarding the insufficient time provided by the two-year period between the effective date and compliance date of the Privacy Rule for covered entities, especially large entities, to reopen and renegotiate all existing vendor and service contracts in order to bring such contracts into compliance with the Privacy Rule's requirements.

The additional transition period would be available to a covered entity, other than a small health plan, if, prior to the effective date of this transition provision, the covered entity has an existing contract or other written arrangement with a business associate, and such contract or arrangement is not renewed or modified between the effective date of this provision and the Privacy Rule's compliance date of April 14, 2003. The provisions are intended to allow those covered entities who qualify as described above to continue to disclose protected health information to the business associate, or allow the business associate to create or receive protected health information on its behalf, for up to one year beyond the Privacy Rule's compliance date, regardless of whether the contract meets the applicable contract requirements in the Privacy Rule. The Department proposes to deem such contracts to be compliant with the Privacy Rule until either the covered entity has renewed or modified the contract following the compliance date of the Privacy Rule (April 14, 2003), or April 14, 2004, whichever is sooner. In cases where a contract simply renews automatically without any change in terms or other action by the parties (also known as ''evergreen contracts''), the Department intends that such evergreen contracts would be eligible for the extension and that deemed compliance would not terminate when these contracts automatically roll over.

Covered entities that were concerned about timely compliance wanted to be able to incorporate the business associate contract requirements at the time they would otherwise be modifying or renewing the contract. Therefore, the extension would only apply until such time as the contract is modified or renewed following the effective date of this modification. Furthermore, the Department proposes to limit the deemed compliance period to one year, as the appropriate balance between maintaining individuals' privacy interests and alleviating the burden on the covered entity.

These transition provisions would apply to covered entities only with respect to written contracts or other written arrangements as specified above, and not to oral contracts or other arrangements. In addition, a covered entity that enters into a contract after the effective date of this modification must have a business associate contract that meets the applicable requirements of §§ 164.502(e) and 164.504(e) by April 14, 2003.

The proposed transition provisions would not apply to small health plans, as defined in the Privacy Rule. Small health plans would still be required to have business associate contracts that are in compliance with the Privacy Rule's applicable provisions, by the Privacy Rule's compliance deadline for such covered entities of April 14, 2004. The Department proposes to exclude this subset of covered entities from these provisions because the statute already provides an additional year for these smaller entities to come into compliance, which should be sufficient for compliance with the Privacy Rule's business associate provisions. In addition, the Department believes that the proposed model contract provisions (see the Appendix to the preamble) will assist small health plans and other covered entities in their implementation of the Privacy Rule's business associate provisions by April 14, 2004.

Proposed § 164.532(e)(2) provides that, after the Privacy Rule's compliance date, these new provisions would not relieve a covered entity of its responsibilities with respect to making protected health information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance. Similarly, under proposed § 164.532(e)(2), these provisions would not relieve a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by business associates, or receive an accounting of uses and disclosures by business associates, as provided for by the Privacy Rule's requirements at §§ 164.524, 164.526, and 164.528. Covered entities would still be required to fulfill individuals' rights with respect to their protected health information,

including information held by a business associate of the covered entity. Covered entities must ensure, in whatever manner effective, the appropriate cooperation by their business associates in meeting these requirements.

The Department retains without modification the standards and implementation specifications that apply to business associate relationships as set forth at §§ 164.502(e) and 164.504(e), respectively, of the Privacy Rule.

E. Uses and Disclosures of Protected Health Information for Marketing

The Privacy Rule defines ''marketing'' at § 164.501 as a communication about a product or service, a purpose of which is to encourage recipients of the communication to purchase or use the product or service, subject to certain limited exceptions. The definition does not limit the type or means of communication that is considered marketing. In general, a covered entity is not permitted to use or disclose protected health information for the purposes of marketing products or services that are not health-related without the express authorization of the individual. Moreover, the Privacy Rule prohibits a covered entity from selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of the third party, without the express authorization of the individual.

The Department understands that covered entities need to be able to discuss their own health-related products and services, or those of third parties, as part of their everyday business and as part of promoting the health of their patients and enrollees. For example, a health care provider may recommend to a patient a particular brand name drug for the treatment of that patient. Even though these communications also meet the above definition of ''marketing,'' the Privacy Rule does not require an authorization for such communications. Instead, the Privacy Rule addresses these types of health-related communications in two ways.

First, the Department did not want to interfere with or unnecessarily burden communications about treatment or about the benefits and services of plans and providers. Therefore, the Privacy Rule explicitly excludes from the definition of ''marketing'' certain health-related communications that may be part of a covered entity's treatment of the individual or its health care operations, but that may also promote the use or sale of a service or product. For example, communications made by a covered entity for the purpose of describing the participating providers and health plans in a network, or describing the services offered by a provider or the benefits covered by a health plan, are excluded from the definition of ''marketing.'' In addition, communications made by a health care provider as part of the treatment of a patient and for the purpose of furthering that treatment, or made by a covered entity in the course of managing an individual's treatment or recommending an alternative treatment, are not considered marketing under the Privacy Rule. These exceptions do not apply, however, to written communications for which a covered entity is compensated by a third party. The Department intended that covered entities be able to discuss freely their products and services and the products and services of others in the course of managing an individual's health care or providing or discussing treatment alternatives with an individual. Under the Privacy Rule, therefore, covered entities are permitted to use and disclose protected health information for these excepted activities without authorization under § 164.508.

Second, the Privacy Rule permits, at § 164.514(e), covered entities to use and disclose protected health information without individual authorization for other health-related communications that meet the definition of ''marketing,'' subject to certain conditions on the manner in which the communications are made. The Privacy Rule does not condition the substance of health-related marketing communications. Rather, it attempts to assure that individuals are aware of the source of the communication and the reason they received such communications, as well as to provide individuals with some control over whether or not they receive these communications in the future.

Specifically, the Privacy Rule permits a covered entity to use or disclose protected health information to communicate to individuals about the health-related products or services of the covered entity or of a third party if the communication: (1) Identifies the covered entity as the party making the communication; (2) identifies, if applicable, that the covered entity received direct or indirect remuneration from a third party for making the communication; (3) generally contains instructions describing how the individual may opt out of receiving future communications about health-related products and services; and (4) where protected health information is used to target the communication about a product or service to individuals based on their health status or health condition, explains why the individual has been targeted and how the product or service relates to the health of the individual. The Privacy Rule also requires a covered entity to make a determination, prior to using or disclosing protected health information to target a communication to individuals based on their health status or condition, that the product or service may be beneficial to the health of the type or class of individual targeted to receive the communication.

For certain permissible marketing communications, however, the Department did not believe these conditions to be practicable. Therefore, § 164.514(e) also permits, without the above conditions, a covered entity to make a marketing communication that occurs in a face-to-face encounter with the individual, or that involves products or services of only nominal value. These provisions permit a covered entity to discuss services and products, as well as provide sample products without restriction, during a face-to-face communication, or distribute calendars, pens, and other merchandise that generally promote a product or service if they are of only nominal value.

Public Comments

The Department received many comments on the Privacy Rule's marketing requirements, as well as recommendations from the NCVHS, based on public testimony from trade associations, medical associations, insurance commissioners, academic medical centers, non-profit hospitals, and consumers. Both industry and consumer groups argued that the marketing provisions were complicated and confusing. Covered entities expressed confusion over the Privacy Rule's distinction between health care communications that are excepted from the definition of ''marketing'' versus those that are marketing but permitted subject to the special conditions in § 164.514(e). For example, commenters questioned if, and if so, when, disease management communications or refill reminders are ''marketing'' communications subject to the special disclosure and opt-out conditions in § 164.514(e). Commenters also stated that it was unclear how to characterize various health care operations activities, such as general health-related educational and wellness promotional activities, and therefore unclear how to treat such activities under the marketing provisions of the Privacy Rule.

The Department also learned of a general dissatisfaction by consumers

with the conditions required by § 164.514(e). Many commenters questioned the general effectiveness of the conditions and whether the conditions would properly protect consumers from unwanted disclosure of protected health information to commercial entities, the re-disclosure of the information by these commercial entities, and the intrusion of unwanted solicitations. They did not feel that they were protected by the fact that commercial entities handling the protected health information would be subject to business associate agreements with covered entities. In addition, commenters expressed specific dissatisfaction with the provision at § 164.514(e)(3)(iii) for individuals to opt out of future marketing communications. Many argued for the opportunity to opt out of marketing communications before any marketing occurred. Others requested that the Department limit marketing communications to only those consumers that affirmatively chose to be the target of such communications.

Proposed Modifications

In response to these concerns, the Department proposes to modify the Privacy Rule to make the marketing provisions clearer and simpler. First, and most significantly, the Department proposes to simplify the Privacy Rule by eliminating the special provisions for marketing health-related products and services at § 164.514(e). Instead, any communication defined as ''marketing'' in § 164.501 would require authorization by the individual. In contrast to the Privacy Rule, under these proposed modifications, covered entities would no longer be able to make any type of marketing communications without authorization simply by meeting the disclosure and opt-out provisions in the Privacy Rule. The Department believes that requiring authorization for all marketing communications would effectuate greater consumer privacy protection not currently afforded by the disclosure and opt-out conditions of § 164.514(e) of the Privacy Rule.

Second, the Department proposes to maintain the substance of the Privacy Rule's definition of ''marketing'' at § 164.501, with minor clarifications. Specifically, the Department proposes to define ''marketing'' as ''to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service.'' The proposed modification retains the substance of the ''marketing'' definition, but changes the language slightly to avoid the implication that marketing is tied to the intent of the communication. Removing language referencing the purpose of the communication would shift the assessment of whether a communication is marketing from the intent of the speaker to the effect of the communication. If the effect of the communication is to encourage recipients of the communication to purchase or use the product or service, the communication would be marketing.

Third, with respect to the exclusions from the definition of ''marketing'' in § 164.501, the Department has tried to simplify the language to avoid confusion and better conform to other sections of the regulation, particularly in the area of treatment communications, and is proposing one substantive change. The modified language reads as follows: ''(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or service (or payment for such product or service) is provided by a covered entity or included in a plan of benefits; (2) For treatment of that individual; or (3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.''

With respect to the third exclusion, the Department is proposing to replace a communication made ''in the course of managing the treatment of that individual,'' with a communication for ''case management'' or ''care coordination'' for that individual. The Department is proposing these changes for clarity because ''case management'' and ''care coordination'' are the terms that are used in the definition of ''health care operations,'' while ''managing the treatment of that individual'' is not. These changes are not intended to increase the scope of the marketing exclusions.

The Department is proposing to eliminate the distinction in the definition of ''marketing'' at § 164.501 pertaining to written communications for which a covered entity is compensated by a third party. Under the Privacy Rule, exceptions from the definition of ''marketing'' are only applicable if the communication is made either orally or in writing when no remuneration from a third party has been paid to a covered entity for making the communication. The Department found that these rules led to confusion and many questions about treatment-related communications, such as prescription refill reminders. Many commenters felt that these restriction rules could burden the ability of providers and patients to communicate freely about treatment. Most commenters did not want any treatment communications to be considered marketing. The Department understands these concerns and wants to avoid situations where a health care provider would be required to obtain an authorization to send out a prescription refill reminder, even if the provider is compensated by a third party for the activity. Therefore, the Department proposes to eliminate this provision in order to facilitate necessary and important treatment communications.

None of these proposed modifications change the basic prohibition in the Privacy Rule against covered entities selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of a third party, without the express authorization of the individual.

The Department received numerous comments suggesting that the Privacy Rule's marketing exceptions in the definition and under § 164.514(e) may not allow for certain common health care communications, such as disease management, wellness programs, prescription refill reminders, and appointment notifications that individuals expect to receive as part of their health care to continue unimpeded. The Department believes that these types of communications are allowed under the exceptions to the definition of ''marketing'' in the Privacy Rule, and therefore would continue to be allowed under the proposed modification. The Department is interested in comments identifying specific types of communication that should or should not be considered marketing.

To reinforce the policy requiring an authorization for most marketing communications, the Department proposes to add a specific marketing provision at § 164.508(a)(3) explicitly requiring an authorization for a use or disclosure of protected health information for marketing purposes. Additionally, if the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the Department proposes that the authorization state this fact. As in the Privacy Rule at § 164.514(e)(2), proposed § 164.508(a)(3) would exclude from the marketing authorization requirements face-to-face communications made by a covered entity to an individual. The Department proposes to retain this exception in the Privacy Rule so that the marketing provisions would not interfere with the

relationship and dialogue between health care providers and individuals. Similarly, the Department proposes to retain the Privacy Rule's exception to the authorization requirement for a marketing communication that concerns products or services of nominal value, but proposes to replace the language with the common business term ''promotional gift of nominal value.''

Given the above proposal, the Department also proposes to remove § 164.514(e) as unnecessary. Accordingly, conforming changes to remove references to § 164.514(e) are proposed at § 164.502(a)(1)(vi) and in paragraph (6)(v) of the definition of ''health care operations'' in § 164.501.

With the elimination of the special rules in § 164.514(e), the Department thereby proposes to eliminate the requirement that disclosures for health-related marketing are limited to disclosures to business associates hired to assist the covered entity with the communication. Under the proposed rule, this distinction would serve no purpose, because an authorization would be required for such disclosures and thus the individual would know from the face of the authorization who will receive the information. Similarly, this simplification also would eliminate the requirement that a marketing communication identify the covered entity responsible for the communication. Under the proposal, the individual would have authorized the disclosure and thus would know which plans and providers are disclosing health information for marketing purposes. There would be added burden but no benefit in retaining an additional notification requirement.

F. Parents as Personal Representatives of Unemancipated Minors [1]

The Privacy Rule is intended to assure that parents have appropriate access to health information about their children. By generally creating new protections and individual rights with respect to individually identifiable health information, the Privacy Rule establishes new rights for parents with respect to the health information about their minor children in the vast majority of cases. In addition, the Department intended that State or other applicable law regarding disclosure of health information about a minor child to a parent should govern where such law exists.

Under the Privacy Rule, parents are granted new rights with respect to health information about their minor children as the personal representatives of their minor children. See § 164.502(g). Generally, parents will be able to access and control the health information about their minor children. See § 164.502(g)(3).

The Privacy Rule recognizes a limited number of exceptions to this general rule. These exceptions generally track the ability of certain minors to obtain specified health care without parental consent under State or other applicable laws. For example, every State has a law that permits adolescents to be tested for HIV without the consent of a parent. These laws are created to assure that adolescents will seek health care that is essential to their own health, as well as public health. In these exceptional cases, where a minor can obtain a particular health care service without the consent of a parent under State or other applicable law, it is the minor and not the parent who may exercise the privacy rights afforded to individuals under the Privacy Rule. See § 164.502(g)(3)(i)–(ii).

The Privacy Rule also allows the minor to exercise control of the protected health information when the parent has agreed to the minor obtaining confidential treatment (see § 164.502(g)(3)(iii)), and allows a covered health care provider to choose not to treat a parent as a personal representative of the minor when the provider is concerned about abuse or harm to the child. See § 164.502(g)(5).

Of course, a covered provider always may disclose health information about a minor to a parent in the most important cases, even if one of the limited exceptions discussed above apply. Disclosure of such information is always permitted as necessary to avert a serious and imminent threat to the health or safety of the minor. See § 164.512(j). The Privacy Rule also states that disclosure of health information about a minor to a parent is permitted if State law authorizes or requires disclosure to a parent, thereby allowing such disclosure where State law determines it is appropriate. See § 160.202, definition of ''more stringent.'' Finally, health information about the minor may be disclosed to the parent if the minor involves the parent in his or her health care and does not object to such disclosure. See §§ 164.502(g)(3)(i) and 164.510(b). The parent will retain all rights concerning any other health information about his or her minor child that does not meet one of the exceptions.

Rationale for Privacy Rule's Provisions Regarding Parents and Minors

The Department continues to balance multiple goals in developing standards in the Privacy Rule with respect to parents and minors. First, the standards need to operate in a way that facilitates access to quality health care. This is an overarching goal throughout the Privacy Rule and is equally important here. Thus, the Department wants to ensure that parents have appropriate access to the health information about their minor children to make important health care decisions about them. The Department also wants to make sure that the Privacy Rule does not interfere with a minor's ability to consent to and obtain health care under current State or other applicable law. Second, the Department does not want to interfere with State or other applicable laws related to competency or parental rights, in general, or the role of parents in making health care decisions about their minor children, in particular. Third, the Department does not want to interfere with the professional requirements of State medical boards or other ethical codes of health care providers with respect to confidentiality of health information or health care practices of such providers with respect to adolescent health care.

As a result of these competing goals, the Department's approach continues to be that the standards, implementation specifications, and requirements with respect to parents and minors defer to, and are consistent with, State or other applicable law and professional practice. Where State and other applicable law is silent, the Department has attempted to create standards that are consistent with such laws and that permit States the discretion to continue to decide the rights of parents and minors with respect to health information without interference from the federal Privacy Rule.

Public Comments

Since December 2000, the Department has heard concerns about the impact of the Privacy Rule on both parental and minor rights. Physicians and other health care professionals who treat adolescents support the existing provisions in the Privacy Rule. These commenters assert that these provisions allow health care providers to deliver care in a manner consistent with their ethical and legal obligations, and that they strike the appropriate balance by permitting providers to render confidential care to minors in limited circumstances, while providing States

[1] Throughout this section of the preamble, ''minor'' refers to an unemancipated minor and ''parent'' refers to a parent, guardian, or other person acting *in loco parentis*.

the ultimate discretion to determine the extent of parents' access to information.

Other commenters oppose the Privacy Rule on the grounds that the Privacy Rule unduly interferes with parental rights to control health care for their minor children and to access health information about their minor children. They assert that failure to provide parents with access to all health information about their minor children could result in negative health outcomes because parents could be making health care decisions for their children based on incomplete information.

Finally, some commenters believe, incorrectly, that the Privacy Rule creates new rights for minors to consent to treatment. The Department issued guidance to clarify that the Privacy Rule does not address access to treatment or the ability to consent to treatment. It is State or other applicable law, and not the Privacy Rule, that governs who can consent to treatment. The Privacy Rule does not in any way alter the ability of a parent to consent to health care for a minor child or the ability of a minor child to consent to his or her own health care.

Proposed Modifications

The Department has reassessed the parents and minors provisions in the Privacy Rule, and does not propose to change its approach. The Department will continue to defer to State or other applicable law and to remain neutral and preserve the status quo to the extent possible. However, the Department is proposing changes to these standards where they do not operate as intended and are inconsistent with the Department's underlying goals.

The Privacy Rule accomplishes the goals of deferring to State law and preserving the status quo when State law is definitive, that is, when State law requires or prohibits disclosure or access. However, when State law provides discretion or is silent, the Privacy Rule may not always accomplish these goals. In particular, the Department has identified two areas in which the standard does not work as intended. First, the language regarding deference to State law that authorizes or prohibits disclosure of health information about a minor to a parent fails to assure that State law governs when the law grants a provider discretion to disclose protected health information to a parent in certain circumstances. Second, the Privacy Rule may prohibit parental access in cases where State law is silent, but where a parent could get access today, consistent with State law.

First, in order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the Department proposes to move the relevant language about the disclosure of health information from the definition of ''more stringent'' (see § 160.202) to the standards regarding parents and minors (*see* § 164.502(g)(3)). This change would make it clear that State and other applicable law governs not only when a State explicitly addresses disclosure of protected health information to a parent but also when such law provides discretion to a provider.

The language itself is also changed in the proposal to adapt it to the new section. The proposed language in § 164.502(g)(3)(ii) states that a covered entity may disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure, and that a covered entity may not disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, prohibits such disclosure. This new language would help clarify when disclosure of health information about a minor to his or her parent is permitted or prohibited based on State or other law. The revision would also clarify that the deference to State or other applicable law includes deference to established case law as well as an explicit provision in a statute or regulation.

Second, the Department proposes to add a new paragraph (iii) to § 164.502(g)(3) to establish a neutral policy regarding the right of access of a parent to health information about a minor under § 164.524, in the rare circumstance in which the parent is technically not the personal representative of the minor under the Privacy Rule. This policy would apply particularly where State or other law is silent or unclear. The new paragraph would not change the right of access, but would simply provide that the person who can exercise the right of access to health information under the Privacy Rule must be consistent with State or other applicable law. It would assure that the Privacy Rule would not prevent a covered entity from providing such access, in accordance with the Privacy Rule, to a parent, as if a personal representative of the minor child, if access would be consistent with State or other applicable law.

This modification also would not affect a parent's right of access under the Privacy Rule in the vast majority of cases where the parent is the personal representative of the minor. In those cases, the parent could exercise the right of access in accordance with the Privacy Rule. This provision would be relevant only in the rare exceptions in which the parent is not the personal representative of the minor.

The Department proposes to use the phrase ''consistent with State or other applicable law'' with regard to access in the personal representatives section of the Privacy Rule. This is different than the proposed language in the section about personal representatives that relates to disclosures, in which a disclosure to a parent is permitted if such disclosure is permitted or required by an ''applicable provision of State or other law, including applicable case law.'' The language in the disclosure paragraphs requires an explicit law for such disclosure to be permitted by the Privacy Rule. The language in the access paragraphs permits parental access in accordance with the Privacy Rule if such access is consistent with State or other law, regardless of whether such law is explicit. Therefore, if a State permits a minor to obtain care without the consent of a parent, but is silent as to whether the parent can access the related medical records of the minor, as is typically the case, then the provider may provide access to the parent if such access is consistent with State law and could deny access to the parent if such denial of access is consistent with State law. This may be based on interpretation of State consent law or may be based on other law. The provider could not, however, abuse this provision to deny access to both the parent and the minor.

This provision would not significantly change the operation of the Privacy Rule with respect to parental access. In cases where the parent is not the personal representative of the minor under the Privacy Rule, the proposed language would not require a provider to grant access to a parent. In these cases, a provider would have discretion to provide access to a parent when permitted to do so under State or other applicable law despite the ability of the minor to obtain health care confidentially or without parental consent under applicable law or professional practice. The Department further assumes that current professional health care provider practices with respect to access by parents and confidentiality of minor's records are consistent with State and other applicable law. In any event, parental access under this section would continue to be subject to any relevant limitations on access in

§ 164.524. This proposed change provides States with the option of clarifying the interaction between their consent laws and the ability for parents to have access to the health information about the care that their minor children received in accordance with such laws. As such, this change should more accurately reflect current State law.

G. Uses and Disclosures for Research Purposes

1. Institutional Review Board (IRB) or Privacy Board Approval of a Waiver of Authorization

Much of the biomedical and behavioral research conducted in the U.S. is governed either by the rule entitled ''Federal Policy for the Protection of Human Subjects'' (the ''Common Rule'') and/or the Food and Drug Administration's (FDA) human subject protection regulations. Although these regulatory requirements, which apply to federally-funded and to some privately-funded research, include protections to help ensure the privacy of subjects and the confidentiality of information, the intent of the Privacy Rule, among other things, is to supplement these protections by requiring covered entities to implement specific measures to safeguard the privacy of individually identifiable health information.

The Common Rule applies to all human research that is supported, conducted, or regulated by any of the seventeen federal agencies that have adopted the Common Rule, including research that uses individually identifiable health information. FDA's human subject protection regulations generally apply to clinical investigations under FDA's jurisdiction, whether or not such research is federally funded. Both sets of regulations have requirements relating to review by an institutional review board (IRB) to ensure that the risks to research participants, including privacy risks, are minimized. As part of this review, generally, IRBs must consider the informed consent document that will be used to inform prospective research participants about the study. Both the Common Rule and FDA regulations have provisions relating to the waiver of informed consent. The Common Rule waiver provisions allow research covered by the Common Rule to be conducted if an IRB determines that certain criteria specified in the Common Rule have been met. FDA's regulations do not contain equivalent waiver provisions since the criteria for a waiver of informed consent are generally not appropriate for clinical research. However, FDA's human subject protection regulations contain exceptions to informed consent for emergency research and for the emergency use of an investigational product.

The Common Rule and FDA's regulations explicitly address privacy and confidentiality in the following places: (1) The informed consent document is required to include ''a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained'' (Common Rule § ____.116(a)(5), 21 CFR 50.25(a)(5)); and (2) to approve a study an IRB must determine that ''when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data'' (Common Rule § ____.111(a)(7), 21 CFR 56.111(a)(7)).

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The Privacy Rule builds upon these existing federal regulations. The requirements are intended to strike a balance by minimizing the privacy risks of research participants, while not impeding the conduct of vital national and international research. For research participants, this means that they will have more information about how their protected health information may be used for research purposes. The Privacy Rule requires researchers who are subject to the Common Rule or FDA's human subject protection regulations to make some changes to the way they use and disclose protected health information. Researchers who are not currently subject to these requirements may, however, need to make more significant changes to current practice.

The Privacy Rule at §§ 164.508 and 164.512(i) establishes the conditions under which covered entities may disclose protected health information for research purposes. In general, covered entities are permitted to use or disclose protected health information for research either with individual authorization, or without individual authorization in limited circumstances and under certain conditions.

A covered entity is permitted to use and disclose protected health information for research purposes with an authorization from the research participant that meets the requirements of § 164.508 of the Privacy Rule. Additional requirements apply to research that is not solely record-based but, rather, involves the treatment of individuals. Specifically, in order for a covered entity to use or disclose protected health information that it creates from a research study that includes treatment of individuals (e.g., a clinical trial), the Privacy Rule at § 164.508(f) requires that additional research-specific elements be included in the authorization form, which describes how protected health information created for the research study will be used or disclosed. The Privacy Rule provides that such an authorization pursuant to § 164.508(f) may be combined with the traditional informed consent document used in research, as well as the consent required under § 164.506 and the notice of privacy practices required under § 164.520. In addition, a covered entity is permitted to condition the provision of the research-related treatment on the individual's authorization for the covered entity to use and disclose protected health information created from the study. The Privacy Rule, however, does not permit an individual authorization form for a research use or disclosure of *existing* protected health information to be combined with a research informed consent document or an authorization form for research that involves treatment.

Alternatively, a covered entity is permitted to use or disclose protected health information for research purposes without authorization by the research participant if the covered entity first obtains either of the following:

- Documentation of approval of a waiver of authorization from an IRB or a Privacy Board. The Privacy Rule delineates specific requirements for the elements that must be documented, including the Board's determinations with respect to eight defined waiver criteria.
- Where a review is conducted preparatory to research or where research is conducted on decedent's information, certain representations from the researcher, including that the use or disclosure is sought solely for such a purpose and that the protected health information is necessary for the purpose.

Public Comment

A number of commenters argued that the waiver criteria in the Privacy Rule were confusing, redundant, and internally inconsistent. These commenters urged the Department to simplify the provisions, especially for entities subject to both the Privacy Rule and the Common Rule. Consequently, these commenters recommended that the Privacy Rule be modified to allow protected health information to be used or disclosed for research without individual authorization if informed consent is obtained as stipulated by the Common Rule or FDA's human subject protection regulations, or waived as

stipulated by the Common Rule. Commenters who favored these changes asserted that the existing federal human subject protection regulations adequately protect all of the rights and welfare of human subjects, and therefore, the Privacy Rule's provisions are unnecessary and duplicative for research currently governed by federal regulations. These commenters also argued that the Privacy Rule's waiver criteria and requirements for individual authorization, in effect, inappropriately modify the Common Rule, since the Privacy Rule prohibits covered entities from honoring an IRB's decisions unless the Privacy Rule's requirements are met. Some of these commenters further suggested that the confidentiality provisions of the Common Rule and FDA's human subject protection regulations be reviewed to determine if they adequately protect the privacy of research participants, and if found to be inadequate, these regulations should be modified.

The Department understands commenters' recommendations to simplify the Privacy Rule as it applies to research. However, as stated in the preamble to the Privacy Rule and the Department's July 6 guidance, the Department disagrees that the Privacy Rule will modify the Common Rule. The Privacy Rule regulates only the content and conditions of the documentation that covered entities must obtain before using or disclosing protected health information for research purposes.

The NCVHS also heard a number of concerns and confusion in testimony at the August 2001 hearing regarding the research provisions in the Privacy Rule. As a result, the NCVHS generally recommended that the Department provide additional guidance in this area. Consistent with this recommendation, the HHS Office for Civil Rights and the HHS Office for Human Research Protections intend to work together to provide interpretations, guidance, and technical assistance to help the research community in understanding the relationship between the Privacy Rule and the Common Rule.

The NCVHS also received testimony requesting that uses and disclosures of protected health information for research be characterized as an element of treatment, payment, and health care operations under the Privacy Rule, and thus be permitted without individual authorization. The NCVHS, in their recommendations to the Department, disagreed with this viewpoint, and expressed support for the policy embodied in the Privacy Rule, permitting uses and disclosures for research pursuant to an authorization or an IRB or Privacy Board waiver of authorization.

In addition, the NCVHS received testimony regarding the issue of recruiting research subjects. Commenters expressed concern and confusion as to how researchers would be able to recruit research subjects when the Privacy Rule does not permit protected health information to be removed from the covered entity's premises during reviews preparatory to research. The NCVHS recommended that the Department provide guidance on this issue. The Department clarifies that the Privacy Rule's provisions for IRB or Privacy Board waiver of authorization are intended to encompass a partial waiver of authorization for the purposes of allowing a researcher to obtain protected health information necessary to recruit potential research participants. For example, even if an IRB does not waive informed consent and individual authorization for the study itself, it may waive such authorization to permit the disclosure of protected health information to a researcher as necessary for the researcher to be able to contact and recruit individuals as potential research subjects.

Many researchers also expressed concerns that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being subject to IRB review than is currently the case. These commenters requested that the standards for de-identification be changed in order to make de-identification a more plausible option for the sharing of data with researchers.

The Privacy Rule's de-identification safe harbor was not designed to be used for research purposes. Rather, the Privacy Rule permits uses and disclosures of protected health information for research purposes with individual authorization, or pursuant to an IRB or Privacy Board waiver of authorization as permitted by § 164.512(i). The Department is aware, however, that some research is conducted today without IRB oversight because the information is not facially identifiable. While the Department is not convinced of the need to modify the safe harbor standard for de-identified information, the Department is requesting comment on an alternative approach that would permit uses and disclosures of a limited data set for research purposes which does not include facially identifiable information but in which certain identifiers remain. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

A number of commenters were concerned about the Privacy Rule's requirement for ''a statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke * * *'', because this provision would prohibit researchers from analyzing the data collected prior to the individual's decision to revoke his or her authorization. The Department is not proposing to modify this provision. The Privacy Rule limits an individual's right to revoke his or her authorization by the extent to which the covered entity has taken action in reliance on the authorization. Therefore, even though a revocation will prohibit a covered entity from further disclosing protected health information for research purposes, the exception to this requirement is intended to allow for certain continued uses of the information as appropriate to preserve the integrity of the research study, *e.g.,* as necessary to account for the individual's withdrawal from the study.

The Department believes that researchers have established practices for accommodating an individual's decision to withdraw from a research study. Indeed, the Common Rule at § ___.46.116 and FDA's human subject protection regulations at 21 CFR 50.25(a)(8) contain similar provisions that require the informed consent document include a statement that ''* * * the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.'' However, the Department understands that these practices may not be uniform and may vary depending on the nature of the research being conducted, with respect to the continued use or disclosure of data collected prior to the participant's withdrawal. If covered entities were permitted to continue using or disclosing protected health information for the research project even after an individual had revoked his or her authorization, this would undermine the primary objective of the authorization requirements to be a voluntary, informed choice of the individual. The Department believes that limiting uses and disclosures following revocation of an authorization to those necessary to preserve the integrity of the research appropriately balances the individual's right of choice and the researcher's reliance on the authorization. However, the Department solicits comment on other means of achieving this balance.

Specific comments, including testimony to the NCVHS, are addressed below where relevant to the corresponding proposed modifications to the Privacy Rule.

Proposed Modifications to Waiver Criteria

The Department understands commenters' concerns that several of the Privacy Rule's criteria for the waiver of a research participant's authorization are confusing and redundant, or inconsistent and conflicting with the Common Rule's requirements for the waiver of an individual's informed consent. However, since the Common Rule's criteria for the waiver of informed consent do not explicitly require IRBs to consider issues related to the privacy of prospective research participants, the Department disagrees with the recommendation to exempt from the Privacy Rule research uses and disclosures that are made with a waiver of informed consent pursuant to the Common Rule.

In response to commenter concerns, the Department proposes the following modifications to the waiver criteria to maintain uniform standards in the Privacy Rule for all research, whether or not the research is subject to the Common Rule, as well as to ensure that the Privacy Rule's waiver process works more seamlessly with the Common Rule's waiver process. The Department, in reassessing the waiver criteria defined by the Common Rule, believes that only two of the Common Rule waiver criteria are practicable when focused solely on patient privacy. Accordingly, the Department proposes to retain the following two criteria in the Privacy Rule that are comparable to two of the Common Rule criteria: (1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals; and (2) the research could not practicably be conducted without the waiver or alteration. The criterion in the Common Rule to determine that the rights and welfare of subjects will not adversely be affected, when limited to privacy, seems to conflict with the criterion regarding assessing minimal privacy risk; it is not clear how both criteria can be met when the focus is solely on privacy. The Department therefore proposes to delete the criterion in the Privacy Rule that the alteration or waiver will not adversely affect the privacy rights and the welfare of the individuals.

Moreover, the Department understands commenters' concerns that substantial overlap and potential inconsistency may exist among three of the Privacy Rule's criteria and the criterion that the use or disclosure involves no more than a minimal risk to the individuals. The Department believes that the three criteria in the Privacy Rule that focus on (1) plans to protect identifiers from improper use and disclosure, (2) plans to destroy the identifiers at the earliest opportunity, and (3) adequate written assurances against redisclosure, essentially help to define when the research use or disclosure poses only a minimal risk to the individual's privacy interests, rather than operate as stand-alone criteria. As such, the Department proposes to require the assessment of these three factors as part of the waiver criterion for assessment of minimal privacy risk. This provision does not preclude the IRB or Privacy Board from assessing other criteria as necessary to determine minimal privacy risk, *e.g.,* whether the safeguards included in the protocol are appropriate to the sensitivity of the data.

In addition, the Department agrees with commenters that the following waiver criterion is unnecessarily duplicative of other provisions to protect patients' confidentiality interests, and therefore, proposes to eliminate it: the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individual, and the importance of the knowledge that may reasonably be expected to result from the research.

Lastly, the Department proposes to retain the criterion that the research could not practicably be conducted without access to and use of the protected health information. The Privacy Rule permits a covered entity to reasonably rely on a researcher's documentation of approval of these waiver criteria, and a description of the data needed for the research as approved by an IRB or Privacy Board, to satisfy it's obligation with respect to limiting the disclosure to the minimum necessary.

In sum, the Department proposes that the following wavier criteria replace the waiver criteria listed in the Privacy Rule at § 164.512(i)(2)(ii):

(1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:

(a) an adequate plan to protect the identifiers from improper use and disclosure;

(b) an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(c) adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(2) The research could not practicably be conducted without the waiver or alteration; and

(3) The research could not practicably be conducted without access to and use of the protected health information.

The Department believes that the proposed modifications to the waiver criteria in the Privacy Rule would eliminate both the redundancies in the waiver criteria and the conflicts these provisions pose to research conducted pursuant to the Common Rule.

2. Research Authorizations

Several commenters argued that certain authorization requirements in the Privacy Rule at § 164.508 are problematic as applied to research uses and disclosures. Generally, commenters raised concerns that the requirements for individual authorization for uses and disclosures for research purposes are unduly complex and burdensome. In response to these concerns, the Department proposes to make a number of modifications to simplify the authorization requirements, both generally and in certain circumstances as they specifically apply to uses and disclosures of protected health information for research. The discussion below focuses on the proposed modifications specific to uses and disclosures for research. See section III.H of the preamble for a discussion of the Department's general proposal to modify the Privacy Rule's authorization requirements.

In particular, the Department proposes a single set of requirements that generally apply to all types of authorizations, including those for research purposes. This modification would eliminate the specific provisions at § 164.508(f) for authorizations for uses and disclosures of protected health information created for research that includes treatment of the individual. As a result, an authorization for such purposes would not require any additional elements above and beyond those required for authorizations in general at § 164.508(c). To conform to this proposed change, the Department also proposes to modify the requirements for prohibiting

conditioning of authorizations at § 164.508(b)(4)(i) to remove the reference to § 164.508(f). A covered health care provider, thus, would be able to condition the provision of research-related treatment on provision of an authorization for the use and disclosure of protected health information for the particular research study.

Additionally, the Department proposes to modify § 164.508(b)(3)(i) to reflect its intent to eliminate the special authorization requirements for research studies that involve treatment in § 164.508(f), as well as to clarify that the Privacy Rule would allow an authorization for the use or disclosure of protected health information for research to be combined with any other legal permission related to the research study, including another authorization or consent to participate in the research. The Department heard from several provider groups who thought the authorization provisions as they relate to research to be too complex. These commenters argued in favor of permitting covered entities to combine all of the research authorizations required by the Privacy Rule with the informed consent to participate in research. To simplify the requirements in response to these concerns, the Department proposes to modify the Privacy Rule to allow for the combining of such permissions.

Finally, the Department proposes to include provisions specific to authorizations for research within the core element proposed at § 164.508(c)(1)(v) for an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. First, the Department proposes to explicitly provide that the statement ''end of the research study'' or similar language is sufficient to meet this requirement for an expiration date or event where the authorization is for a use or disclosure of protected health information for research. This modification is proposed in response to commenter concerns that the particular end date of a research study may not be known and questions regarding whether the end of a research study is an ''event''. In addition, such a statement would also be sufficient to encompass additional time, even after the conclusion of the research, to allow for the use of protected health information as necessary to meet record retention requirements to which the researcher is subject. The Department, therefore, proposes to clarify that including such a statement on the research authorization would fulfill the requirement to include an expiration event.

Similarly, the Department proposes to explicitly provide that the statement ''none'' or similar language is sufficient to meet this provision if the authorization is for a covered entity to use or disclose protected health information for the creation or maintenance of a research database or repository. The Department proposes this modification in response to commenter concerns that the Privacy Rule's requirement for an ''expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure'' will create a significant obstacle for the development of research databases or repositories. Commenters stated that research databases and repositories are often retained indefinitely, and the requirement that an authorization include an expiration date or event was found to be counter to the purpose of developing such research resources. The Department understands these concerns and, therefore, proposes to permit an individual's authorization to use or disclose protected health information for the creation and maintenance of a research database or repository to be valid without an expiration date or event. The Department emphasizes that this provision is intended to apply only in the limited circumstances where a use or disclosure is sought solely for the creation or maintenance of a database or repository, and does not extend to authorizations for further research or any other purpose. Therefore, subsequent research using the information maintained in the database or repository pursuant to an authorization would require that the authorization include the term ''end of the research study'' or other explicit expiration date or event.

3. Research Transition Provisions

The Privacy Rule includes at § 164.532 different transition requirements for research that includes treatment (*i.e.,* clinical trials) and for research that does not include treatment (*i.e.,* records research). For research that includes treatment, the Privacy Rule states that as long as legal permission was obtained to use or disclose protected health information for a specific research project, that legal permission will continue to be valid until the completion of the research project; a new permission will not be required to use or disclose protected health information that was created or received either before or after the compliance date. However, for research that does not include treatment, a legal permission obtained before the compliance date will only be valid for the use and disclosure of protected health information obtained before the compliance date. The Privacy Rule does not prescribe the form of the express legal permission in either case. Express legal permission could be a signed agreement by the individual to participate in a privately-funded research study.

The Privacy Rule does not explicitly address transition provisions for research studies ongoing after the compliance date where the legal permission of the individual had not been sought. This point was noted by several of those who commented on the Privacy Rule's transition provisions as they apply to research. Some of these commenters recommended that the Privacy Rule be revised to grandfather in the research use and disclosure of all protected health information that existed prior to the compliance date. These commenters expressed concern that much data would be lost to the research community since it would often be infeasible or impossible to obtain individuals' permission to use this archival information.

Given the confusion about the transition provisions and to assure that ongoing, vital research will not be impeded, the Department reassessed the relevant provisions and proposes that there be no distinction between research that includes treatment and research that does not, and no distinction between requirements for research conducted with patients' informed consent versus research conducted with an IRB-approved waiver of patients' informed consent. Therefore, the Department proposes to permit a covered entity to use or disclose for a specific research study protected health information that is created or received either before or after the compliance date (if there is no agreed-to restriction in accordance with § 164.522(a)), if the covered entity has obtained, prior to the compliance date an authorization or other express legal permission from an individual to use or disclose protected health information for the research study. In addition, the Department proposes to grandfather in research in which the individual has signed an informed consent to participate in the research study, or an IRB has waived informed consent for the research study, in accordance with the Common Rule or FDA's human subject protection regulations.

These proposed provisions are intended to apply once any of the permissions described above has been granted, regardless of whether the

research study actually has begun by the compliance date or not, provided that the permission was obtained prior to the compliance date. In addition, with respect to the informed consent of the individual, the Department proposes not to limit the transition provisions to an informed consent pursuant to the Common Rule, but rather intends to allow for the transition of an informed consent for privately-funded research. Research studies that do not obtain such express legal permission, informed consent, or IRB waiver prior to the compliance date must obtain either authorization, as required by § 164.508, or a waiver of authorization from an IRB or Privacy Board, as required by § 164.512(i).

H. Uses and Disclosures for Which Authorization Is Required

The Privacy Rule permits covered entities to use and disclose protected health information for treatment, payment, and health care operations (subject to the individual's consent, if applicable) and as necessary for public policy purposes, such as public health and safety, health oversight activities, and enforcement. Covered entities must obtain an individual's voluntary and informed authorization before using or disclosing protected health information for any purpose that is not otherwise permitted or required under the Privacy Rule.

The Privacy Rule provides for the individual's voluntary authorization for uses and disclosure of his or her protected health information by prohibiting, with very limited exceptions, covered entities from conditioning treatment, payment, or eligibility for benefits or enrollment in a health plan, on obtaining an authorization. Furthermore, in § 164.508(b)(5), the Privacy Rule permits individuals, with limited exceptions, to revoke an authorization at any time. These provisions are intended to prevent covered entities from coercing individuals into signing an authorization that is not necessary for their health care.

To help ensure that individuals give their authorization for the use or disclosure of their protected health information on an informed basis, the Privacy Rule, under § 164.508(c), sets out core elements that must be included in any authorization. These core elements are intended to provide individuals with information needed to make an informed decision about giving their authorization. This information includes specific details about the use or disclosure, as well as providing the individual fair notice about his or her rights with respect to the authorization and the potential for the information to be redisclosed. The Privacy Rule requires authorizations to provide individuals with additional information for specific circumstances under the following three sets of implementation specifications: in § 164.508(d), for authorizations requested by a covered entity for its own uses and disclosures; in § 164.508(e), for authorizations requested by a covered entity for disclosures by others; and in § 164.508(f), for authorizations for research that includes treatment of the individual. Additionally, the authorization must be written in plain language so individuals can understand the information presented in the authorization.

Public Comments

The Department received a number of comments raising various issues regarding implementation of the authorization requirements. A majority of commenters said the authorization provisions of the Privacy Rule are too complex and confusing. Some commented that the sets of implementation specifications are not discrete, creating the potential for the implementation specifications for specific circumstances to conflict with the required core elements. Others expressed confusion generally about which authorization requirements they would be required to implement.

Commenters also have raised concerns about the revocation provisions in § 164.508(b)(5). The Privacy Rule provides an exception to the individual's right to revoke an authorization where the authorization is obtained as a condition of obtaining insurance coverage, or where other law provides the insurer the right to contest a claim under the policy. The Department intended this provision to permit insurers to obtain necessary protected health information during contestability periods under State law. For example, an individual may not revoke an authorization for the disclosure of protected health information to a life insurer for the purpose of investigating material misrepresentation if the individual's policy is still subject to the contestability period. However, commenters were concerned because other law also provides the insurer with the right to contest the policy itself, not just a claim under the policy, and the Privacy Rule does not provide an explicit exception to allow for this right.

Proposed Modifications

In response to these concerns, the Department is proposing modifications to the Privacy Rule to simplify the authorization provisions, while preserving the provisions for ensuring that authorizing the use or disclosure of protected health information is a voluntary and informed decision. The Department proposes to consolidate the implementation specifications into a single set of criteria to simplify these provisions, prevent confusion, and eliminate the potential for conflicts between the authorization requirements.

Thus, under the proposed modifications, the specifications for the elements and requirements of an authorization would be consolidated under § 164.508(c). Paragraphs (d), (e), and (f) in this section would be eliminated. Paragraph (c)(1) would require all authorizations to contain the following core elements: (1) A description of the information to be used or disclosed, (2) the identification of the persons or class of persons authorized to make the use or disclosure of the protected health information, (3) the identification of the persons or class of persons to whom the covered entity is authorized to make the use or disclosure, (4) a description of each purpose of the use or disclosure, (5) an expiration date or event, (6) the individual's signature and date, and (7) if signed by a personal representative, a description of his or her authority to act for the individual. The Department also proposes to add new language to clarify that when the individual initiates the authorization for his or her own purposes, the purpose may be described as ''at the request of the individual.'' Thus, individuals would not have to reveal the purpose of the requested disclosure if they chose not to do so.

Paragraph (c)(2) would require authorizations to contain the following notifications: (1) A statement that the individual may revoke the authorization in writing, and either a statement regarding the right to revoke, and instructions on how to exercise such right, or to the extent this information is included in the covered entity's notice, a reference to the notice, (2) a statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule, or, if conditioning is permitted by the Privacy Rule, a statement about the consequences of refusing to sign the authorization, and (3) a statement about the potential for the protected health information to be subject to redisclosure

by the recipient. The Department also proposes to limit the requirement that a covered entity disclose any remuneration that will result from obtaining an authorization, to authorizations for marketing purposes. Therefore, the remuneration disclosure requirement appears only in the new § 164.508(a)(3) on marketing authorizations. These modifications would permit covered entities to use a single authorization form, and make it easier to use for the individual and the covered entity, as well as third parties.

The Department also proposes to add language to the revocation exceptions in § 164.508(b)(5)(ii) to include an exception with respect to the insurer's right to contest the policy under other law. This proposed modification would recognize, without expanding upon, an insurer's right to contest the policy under existing law.

Other proposed modifications concerning authorizations for research are discussed in section III.G of the preamble.

Finally, the Department proposes a number of technical conforming modifications throughout this section of the Privacy Rule to accommodate the modifications to this section, as well as the proposed modifications to the consent provision. Specifically, the Department proposes to modify the exception to the minimum necessary standard in the Privacy Rule at § 164.502(b)(2), which exempts from the standard uses or disclosures made pursuant to an authorization under § 164.508, except for authorizations requested by the covered entity under § 164.508(d), (e), or (f). By simplifying the authorization requirements, the proposed modifications described above would eliminate the special authorizations required by § 164.508(d), (e), or (f) in the Privacy Rule. To be consistent with the proposed approach, the Department proposes to eliminate the reference to such authorizations in the exception at § 164.502(b)(2), thereby expanding the exception to exempt from the minimum necessary standard uses and disclosures made pursuant to an authorization for any purpose.

The Department also proposes modifications at §§ 164.508(a)(2)(i)(A), (B), and (C) to place limits on the use and disclosure of psychotherapy notes without authorization to carry out treatment, payment or health care operations. The modifications clarify that this information is not permitted to be used or disclosed without individual authorization for purposes of another entity.

The Department proposes to delete § 164.508(b)(4)(iii), relating to a health plan conditioning payment of a claim on the provision of an authorization, since this provision will be rendered moot under the proposed modifications to the consent provision. Additionally, the Department proposes to delete § 164.508(b)(2)(iv) of the Privacy Rule, because it is redundant with § 164.508(b)(1)(i), and to modify § 164.508(b)(1)(i) to clarify that an authorization is valid only if it meets the requirements of paragraphs (c)(1) and (c)(2). Modifications are also proposed at § 164.508(b)(1)(v) of the Privacy Rule (newly designated as § 164.508(b)(2)(iv) in the proposed Rule) to clarify that an authorization that violates paragraph (b)(4) (prohibiting the conditioning of authorizations) is not a valid authorization.

These proposed modifications also expressly provide that an authorization is needed for purposes of marketing. *See* section III.G of the preamble for a detailed discussion of the proposed modifications regarding marketing.

I. De-Identification of Protected Health Information

At § 164.514(a)–(c), the Privacy Rule permits a covered entity to de-identify protected health information so that such information may be used and disclosed freely, without being subject to the Privacy Rule's protections. Health information is de-identified, or not individually identifiable, under the Privacy Rule, if it does not identify an individual and if the covered entity has no reasonable basis to believe that the information can be used to identify an individual. In order to meet this standard, the Privacy Rule provides two alternative methods for covered entities to de-identify protected health information.

First, a covered entity may demonstrate that it has met the standard if a person with appropriate knowledge and experience applying generally acceptable statistical and scientific principles and methods for rendering information not individually identifiable makes and documents a determination that there is a very small risk that the information could be used by others to identify a subject of the information. The preamble to the Privacy Rule refers to two government reports that provide guidance for applying these principles and methods, including describing types of techniques intended to reduce the risk of disclosure that should be considered by a professional when de-identifying health information. These techniques include removing all direct identifiers, reducing the number of variables on which a match might be made, and limiting the distribution of records through a ''data use agreement'' or ''restricted access agreement'' in which the recipient agrees to limits on who can use or receive the data.

Alternatively, covered entities may choose to use the Privacy Rule's safe harbor method for de-identification. Under the safe harbor method, covered entities must remove all of a list of 18 enumerated identifiers and have no actual knowledge that the information remaining could be used alone or in combination to identify a subject of the information. The identifiers that must be removed include direct identifiers, such as name, street address, social security number, as well as other identifiers, such as birth date, admission and discharge dates, and five-digit zip code. The safe harbor does allow for the disclosure of all geographic subdivisions no smaller than a State, as well as the initial three digits of a zip code if the geographic unit formed by combining all zip codes with the same initial three digits contains more than 20,000 people. In addition, age, if less than 90, gender, ethnicity, and other demographic information not listed may remain in the information. The safe harbor is intended to provide covered entities with a simple, definitive method that does not require much judgment by the covered entity to determine if the information is adequately de-identified.

The Privacy Rule also allows for the covered entity to assign a code or other means of record identification to allow de-identified information to be re-identified by the covered entity, if the code is not derived from or related to information about the subject of the information, *e.g.,* derivation of the individual's social security number, and is not otherwise capable of being translated so as to identify the individual. The covered entity also may not use or disclose the code for any other purpose, and may not disclose the mechanism, *e.g.,* algorithm or other tool, for re-identification.

The Department is cognizant of the increasing capabilities and sophistication of electronic data matching used to link data elements from various sources, and from which, therefore, individuals may be identified. Given this increasing risk to individuals' privacy, the Department included in the Privacy Rule the above stringent standards for determining when information may flow unprotected. The Department also wanted the standards to be flexible enough so the Privacy Rule would not be a disincentive for covered entities to use or disclose de-identified

information wherever possible. The Privacy Rule, therefore, strives to balance an individuals' privacy interests with providing a sufficient level of information to make de-identified databases useful.

Public Comments

The Department heard a number of concerns from commenters regarding the de-identification standard in the Privacy Rule. These comments generally were raised in the context of using and disclosing information for research, public health purposes, or for certain health care operations. Commenters were concerned that the safe harbor method for de-identifying protected health information was so stringent that it required removal of many of the data elements that were essential to their analyses for these purposes. The comments, however, demonstrated little consensus as to which data elements were needed for such analyses, with many commenters requesting elements, such as birth date, neighborhood, account numbers, medical record numbers, and device identifiers. In addition, commenters largely were silent with regard to the feasibility of using the Privacy Rule's alternative statistical method to de-identify information. The Department is aware, however, of a general view of covered entities that the statistical method is beyond their capabilities.

With regard to health care operations, a number of state hospital associations were concerned that the Privacy Rule will prevent them from collecting patient information from area hospitals in order to conduct and disseminate analyses that are useful for hospitals in making decisions about quality and efficiency improvements. These commenters explained that the Privacy Rule's stringent provisions for de-identification would not allow for the necessary data elements to be collected for such analyses. Specifically, commenters identified the following critical elements that would be restricted from disclosure by the Privacy Rule's de-identification standard: Five-digit zip code, city, county or neighborhood; the dates on which the injury or illness was treated and the patient released from the hospital; and the month of birth (noted by commenters as especially important for very young children). In addition, commenters argued that the Privacy Rule's provisions for data aggregation by a business associate, while allowing for the collection and aggregation of identifiable data from multiple hospitals for quality and efficiency purposes, would not allow state hospital associations to disclose all the desired analyses back to the contributing hospitals because some identifiers would remain in the data. These commenters emphasized the importance to hospitals to have access to information about community health care needs and the ability to compare their community to others in the state so that they may adequately respond to and fulfill such needs.

In addition, commenters identified a problem with hospitals themselves sharing aggregated information with other hospitals for health care operations purposes. The Privacy Rule prohibits covered entities from disclosing protected health information for the health care operations purposes of other covered entities. As described in section III.A.2 of the preamble regarding Uses and Disclosures for Treatment, Payment, and Health Care Operations, the Department is proposing to modify this restriction and allow covered entities to disclose protected health information for another covered entity's health care operations under some circumstances. However, two conditions on the sharing of individually identifiable information for health care operations may continue to pose a problem. The proposed modifications would condition the sharing on both entities being covered entities and both entities having a relationship with the individual. Hospitals wishing to exchange patient information with each other or with other community health care providers would not satisfy these conditions in all cases.

Many researchers expressed similar concerns, explaining that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being done on identifiable health information and, thereby, being subject to IRB review than is currently the case. Under the Common Rule, research that uses ''identifiable private information'' must undergo IRB review. However, there is no agreed-upon definition of ''identifiable private information'' and IRBs determine on a case-by-case basis what constitutes ''identifiable private information.'' Consistent with this variability, the comments did not demonstrate consensus on what identifiers should be permitted to be retained for research purposes.

In addition, commenters also expressed concerns with respect to public health reporting. For example, some product manufacturers subject to the jurisdiction of FDA were concerned that they would not be able to operate post-marketing surveillance registries, to which health care providers report problems. Commenters stated that even though they do not need information with direct identifiers, the Privacy Rule's strict de-identification standard would not allow the reporting of useful information into the registry. Additionally, a number of commenters described the de-identification standard as hampering many research and health care operations activities that also serve a public health purpose, *e.g.,* the tracking of the emergence of disease that could be the result of bioterrorism.

The Department also heard from some consumer advocates who supported the elimination of barriers they believe are imposed by the de-identification standard to important medical research. In order to ensure privacy is protected, but at the same time not render impossible research using de-identified information, these commenters recommended that the Department permit the use of information for research that is facially de-identified, *i.e.,* stripped of direct identifiers, so long as the research entity provides assurances that it will not use or disclose the information for purposes other than research and will not identify or contact the individuals who are the subjects of the information.

Solicitation of Comment

The Department is aware of the importance of the activities described by the commenters but is not currently convinced of the need to modify the safe harbor standard for de-identified information. Instead, the Department requests comment on an alternative approach that would permit uses and disclosures of a limited data set which does not include facially identifiable information but in which certain identifiers would remain. The Department is not considering permitting the disclosure of any such limited data set for general purposes, but rather is considering permitting disclosure of such information for research, public health, and health care operations purposes.

The limited data set would not include the following information, which the Department considers direct identifiers: name, street address, telephone and fax numbers, e-mail address, social security number, certificate/license number, vehicle identifiers and serial numbers, URLs and IP addresses, and full face photos and any other comparable images. The limited data set would include the following identifiable information: admission, discharge, and service dates; date of death; age (including age 90 or over); and five-digit zip code. The

Department solicits comment on whether another one or more geographic units smaller than State, such as city, county, precinct, neighborhood or other unit, would be needed in addition to, or be preferable to, five-digit zip code.

In addition, to address concerns raised by commenters regarding access to birth date for research or other studies relating to young children or infants, the Department clarifies that the Privacy Rule does not prohibit age of an individual from being expressed as an age in months, days, or hours. Given that the limited data set would include all ages, including age in months, days, or hours, if preferable, the Department requests comment on whether date of birth is needed and, if so, whether the entire date is needed, or just the month and year.

In addition, to further protect privacy, the Department would propose to condition the disclosure of the limited data set on covered entities obtaining from the recipients a data use or similar agreement, in which the recipient would agree to limit the use of the limited data set to the specified purposes in the Privacy Rule, and limit who can use or receive the data, as well as agree not to re-identify the data or contact the individuals. Commenters seemed to indicate that recipients would be amenable to such conditions.

The Department solicits public comment on the feasibility and acceptability of the above approach for the described purposes, and whether or not the limitations and conditions would be sufficiently protective of patient privacy.

Proposed Modifications

In addition to the solicitation of comment above, the Department proposes a technical modification to the safe harbor provisions. A number of commenters expressed confusion regarding what was believed to be conflicting provisions within the de-identification standard. Commenters argued that, on the one hand, the Privacy Rule treats information as de-identified if all listed identifiers on the information are stripped, including any unique, identifying number, characteristic, or code. Yet, the Privacy Rule permits a covered entity to assign a code or other record identification to the information so that it may be re-identified by the covered entity at some later date.

The Department did not intend the re-identification code to be considered one of the enumerated identifiers. Therefore, the Department proposes to clarify its intent by explicitly excepting the re-identification code or other means of record identification permitted by § 164.514(c) from the listed identifiers at § 164.514(b)(2)(i)(R).

J. Technical Corrections and Other Clarifications

In addition to the modifications described above, the Department proposes to make the following clarifications:

1. Changes of Legal Ownership. The Privacy Rule's definition of health care operations, at §164.501, includes business management and general administrative activities of the entity, including, due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity.

In the preamble to the Privacy Rule, the Department explained that this language was included to remedy an omission in the 1999 proposed Rule by

> add[ing] to the definition of health care operations disclosures of protected health information for due diligence to a covered entity that is a potential successor in interest. This provision includes disclosures pursuant to the sale of a covered entity's business as a going concern, mergers, acquisitions, consolidations, and other similar types of corporate restructuring between covered entities, including a division of a covered entity, and to an entity that is not a covered entity but will become a covered entity if the reorganization or sale is completed.

65 FR at 82609 (December 28, 2000) (response to comment); *see also* 65 FR at 82491 (similar language); 65 FR at 82652 (''We clarify in the definition of health care operations that a covered entity may sell or transfer its assets, including protected health information, to a successor in interest that is or will become a covered entity.'')

Despite language in the preamble to the contrary, the definition of health care operations in the Privacy Rule does not expressly provide for the transfer of protected health information upon sale or transfer to a successor in interest. Instead, the definition of ''health care operations'' only mentions disclosures of protected health information for ''due diligence'' purposes when a sale or transfer to a successor in interest is contemplated. ''Due diligence'' is generally understood to mean the ''[a] prospective buyer's or broker's investigation and analysis of a target company, a piece of property, or a newly issued security.'' Black's Law Dictionary (7th ed. 1999) *available in* Westlaw, DIBLACK database.

The Department proposes to add language to paragraph (6) of the definition of ''health care operations'' to clarify the intent to permit the transfer of records to a covered entity upon a sale, transfer, merger, or consolidation. This proposed change would prevent the Privacy Rule from interfering with necessary treatment or payment activities upon the sale of a covered entity or its assets.

The Department also proposes to use the terms ''sale, transfer, consolidation or merger'' to eliminate the term ''successor in interest'' from this paragraph. The Department intended this provision to apply to any sale, transfer, merger or consolidation and believes the current language may not sufficiently accomplish this goal. The proposed language's use of the terms ''sale, transfer, merger and consolidation'' is based on language used in model State laws addressing the disclosure of personal or privileged information collected or received in connection with an insurance transaction.

The Department retains the limitation that such disclosures are health care operations only to the extent the entity receiving the protected health information is a covered entity or will become a covered entity as a result of the sale, transfer, merger, or consolidation. In addition, the proposed modification does not affect any responsibility of covered entities either under other law or ethical obligation to notify individuals appropriately of a sale, transfer, merger, or consolidation.

2. Group Health Plan Disclosures of Enrollment and Disenrollment Information to Plan Sponsors. The Department proposes to modify the Privacy Rule to make express the Department's policy, which was explained in the preamble to the Privacy Rule, that group health plans are permitted to share enrollment and disenrollment information with plan sponsors without amending plan documents. Under the Privacy Rule, a group health plan, as well as a health insurance issuer or HMO providing health insurance or health coverage to the group health plan, are covered entities. Neither employers nor other plan sponsors are defined as covered entities. The Department recognizes the legitimate need of the plan sponsor to have access to health information of these covered entities in certain situations. Therefore, the Privacy Rule at § 164.504(f) permits a group health plan, and health insurance issuers or HMOs with respect to the group health plan, to disclose protected health information to the plan sponsor provided that, among other requirements, the plan documents are

amended to appropriately reflect and restrict the plan sponsor's uses and disclosures of such information.

There are two exceptions where the Privacy Rule permits group health plans (or health insurance issuers or HMOs, as appropriate) to disclose information to a plan sponsor without requiring amendment of plan documents. First, § 164.504(f) permits such disclosures when the information needed by the plan sponsor is summary health information. Second, as explained in the preamble to the Privacy Rule, a plan sponsor is permitted to perform enrollment functions on behalf of its employees without meeting the requirements of § 164.504(f), as such functions are considered outside of the plan administration functions. Therefore, a group health plan is also permitted to disclose enrollment or disenrollment information to the plan sponsor without amending the plan documents as required by § 164.504(f).

However, this policy regarding disclosures of enrollment or disenrollment information was addressed only in the preamble to the Privacy Rule and not explicitly in the regulation itself. As a result, the policy seems to have been overlooked and the absence of a specific provision in the regulation itself has caused misinterpretation within industry. To remedy this misunderstanding and make its policy clear, the Department proposes to add an explicit exception at § 164.504(f)(1)(iii) to clarify that group health plans (or health insurance issuers or HMOs, as appropriate) are permitted to disclose enrollment or disenrollment information to a plan sponsor without meeting the plan document amendment and other related requirements.

3. Definition of ''Individually Identifiable Health Information.'' The Department proposes to move the definition of ''individually identifiable health information'' from § 164.501 to § 160.103 to clarify that the definition is relevant to all of the provisions in Parts 160 through 164.

4. Accounting of Disclosures of Protected Health Information. Under the Privacy Rule at § 164.528, individuals have the right to receive an accounting of disclosures of protected health information made by the covered entity, with certain exceptions. These exceptions, or instances where a covered entity is not required to account for disclosures, include disclosures made by the covered entity to carry out treatment, payment, or health care operations, as well as disclosures to individuals of protected health information about them.

The accounting is required to include the following: (1) disclosures of protected health information that occurred during the six years prior to the date of the request for an accounting, including disclosures to or by a business associate of the covered entity; (2) for each disclosure: the date of the disclosure; the name of the entity or person who received the protected health information; if known, the address of such entity or person; a brief description of the protected health information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such a statement, a copy of the individual's written authorization pursuant to § 164.508 or a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512. For multiple disclosures of protected health information to the same person, the Privacy Rule allows covered entities to provide individuals with an accounting that contains only the following information: (1) For the first disclosure, a full accounting, with the elements described in (2) above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period.

A number of commenters raised concerns that the high costs and administrative burdens associated with the accounting requirements would deter covered entities from disclosing protected health information. In response to these concerns, the Department proposes to expand the exceptions to the standard at § 164.528(a)(1) to include disclosures made pursuant to an authorization as provided in § 164.508. Covered entities would no longer be required to account for any disclosures authorized by the individual in accordance with § 164.508. The Department is proposing to alleviate burden in this way because it is believed that an accounting of disclosures made pursuant to such permissions is unnecessary because such disclosures are already known by the individual, in as much as the individual was required to sign the forms authorizing the disclosures.

Accordingly, the Department proposes to make two conforming amendments at §§ 164.528(b)(2)(iv) and (b)(3) to delete references in the accounting content requirements to disclosures made pursuant to an authorization.

5. Uses and Disclosures Regarding FDA-regulated Products and Activities. The Department recognizes the importance of public health activities and, in the Privacy Rule, allows information to be used and disclosed for these purposes without requiring individual consent or authorization. The recent anthrax attacks and the threat of other forms of bio-terrorism have served to underscore the vital necessity of a strong and effective public health system. The Rule allows covered entities to disclose protected health information to public health authorities for a broad array of public health purposes, including reporting of diseases, injuries, vital statistics, and for the conduct of public health surveillance and interventions. The Rule permits public health reporting to private persons who are contractors for or agents of the public health authority. The Rule also recognizes the essential role of manufacturers and other private persons in carrying out the Food and Drug Administration's (FDA) public health mission.

The Privacy Rule, at § 164.512(b)(1)(iii), specifically permits covered entities to disclose protected health information, without individual authorization, to a person who is subject to the jurisdiction of the FDA for the following specified purposes: (1) To report adverse events, defects or problems, or biological product deviations with respect to products regulated by the FDA (if the disclosure is made to the person required or directed to report such information to the FDA), (2) to track products (if the disclosure is made to the person required or directed to report such information to the FDA), (3) for product recalls, repairs, or replacement, and (4) for conducting post-marketing surveillance to comply with FDA requirements or at the direction of the FDA.

The Department received a number of comments on the provisions for public health activities related to FDA-regulated products. The majority of these commenters were concerned that the Privacy Rule constrains important public health surveillance and reporting activities by impeding the flow of needed information to those subject to the FDA's jurisdiction. In particular, commenters noted that limiting disclosures to those that are ''required or directed'' by FDA does not reflect the breadth of public health activities that are currently being conducted by the private sector on a voluntary basis or under the general auspices of—but not at the direction of—FDA. In general, commenters were concerned that such limitations would stifle current reporting practices. For example, the

FDA currently obtains the vast majority of its information about drugs and devices indirectly from health care providers who voluntarily report known adverse events or problems to the manufacturer of the product. The manufacturer may or may not be required to report such adverse events to FDA. Commenters assert that the present language of the Privacy Rule will have a ''chilling effect'' on these important communications due to uncertainty over the manufacturer's obligation to report to the FDA.

Some concern was expressed about the potential liability of a covered entity for a disclosure to an employee of the manufacturer who is not ''a person subject to the jurisdiction of the FDA'' or to the wrong manufacturer. The Department seeks to assure covered entities that use of the term ''a person'' was not intended to limit reporting to a single individual within an entity, but to allow reporting to flow as it does today between health care providers and representatives of manufacturers or other companies. Moreover, the Department seeks to clarify that covered entities may continue to disclose protected health information to the companies identified on the product labels as the manufacturer registered with the FDA to distribute the product.

To eliminate the ''chilling effect'' of the Rule, some commenters requested that the Department include in the Rule a ''good-faith'' safe harbor to protect covered entities from enforcement actions arising from unintentional violations of the Privacy Rule. For example, a health care provider would not have violated the Rule if the disclosure was made in the good faith belief that the entity to whom the adverse event was reported was responsible for the FDA-regulated product, even if it turned out to be the wrong manufacturer.

Finally, a number of commenters, including some that are subject to the FDA's jurisdiction, suggested that: identifiable health information is not necessary for some or all of these public health reporting purposes; that identifiable health information is not reported to FDA; and that for purposes of post-marketing surveillance, information without direct identifiers (such as name, mailing address, phone number, social security number, and email address) should suffice. The Department recognizes that there must be a balance between the need for public health activities that benefit every individual by safeguarding the effectiveness, safety, and quality of the products regulated by the FDA, and the privacy interests of specific individuals. However, the comments did not offer a consensus as to which activities could be performed without identifiable information or which identifiers, if any, were needed. In Section III.I of this preamble regarding De-identification issues, the Department is soliciting comments on a limited data set for use for specific purposes, including public health. The Department also requests comments as to whether this limited data set should be required or permitted for some or all public health purposes or if a special rule should be developed for public health reporting.

The Department did not intend the Privacy Rule to discourage or prevent the reporting of adverse events or otherwise disrupt the flow of essential information that FDA and persons subject to the jurisdiction of FDA need in order to carry out their important public health activities. Therefore, the Department proposes a number of changes to eliminate uncertainties identified by the commenters, and, thereby, encourage covered entities to continue to report and cooperate in these essential public health activities. The proposed modifications attempt to recognize and preserve current public health activities of persons subject to the jurisdiction of the FDA while not diminishing the health information privacy protections for individuals.

Specifically, the Department proposes to remove from § 164.512(b)(1)(iii)(A) and (B) the phrase ''if the disclosure is made to a person required or directed to report such information to the Food and Drug Administration'' and to remove from subparagraph (D) the phrase ''to comply with requirements or at the direction of the Food and Drug Administration.'' In lieu of this language, HHS proposes to describe at the outset the public health purposes for which disclosures may be made. The proposed language reads: ''A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity.''

The Department proposes to retain the listing of specific activities identified in paragraphs (A), (B), (C), and (D), to give covered entities additional assurance that public health disclosures for these activities are permissible under the Privacy Rule. The listing, however, is no longer an exclusive list of FDA-related public health activities, but rather is a list of examples of the most common activities. Additionally, language has been added to paragraph (C) to include ''lookback'' activities which are necessary for tracking blood and plasma products, as well as quarantining tainted blood or plasma and notifying recipients of such tainted products.

The privacy of individuals' health information would continue to be protected through the limitations placed on the permissible disclosures for FDA purposes. Specifically, such disclosures must relate to FDA-regulated products or activities for which the person using or receiving the information has responsibility, and for activities related to the safety, effectiveness, or quality of such FDA-regulated product or activity.

The Department is not proposing a good-faith safe harbor at this time because it believes that these proposed modifications will adequately address the concerns and uncertainties facing covered entities. However, the Department is interested in hearing from affected parties as to whether the proposed modifications are adequate or if additional measures are necessary for health care providers or others to continue to report this vital information about FDA-regulated products or activities.

6. Hybrid Entities. The Privacy Rule defines covered entities that primarily engage in activities that are not covered functions—i.e., functions that relate to the entity's operation as a health plan, health care provider, or health care clearinghouse—as hybrid entities. See § 164.504(a). In order to limit the burden on such entities, most of the requirements of the Privacy Rule only apply to the health care component(s) of the hybrid entity and not to the parts of the entity that do not engage in covered functions. The health care component(s) include those components of the entity that perform covered functions and other components of the entity that support those covered functions, in the same way such support may be provided by a business associate. A covered entity that is a hybrid entity is required to define and designate those parts of the entity that engage in the covered functions and ''business associate'' functions and that are, therefore, part of the health care component(s). The health care component is designed to include components that engage in ''business associate'' functions because it is impossible for the entity to contract with itself and the authorization requirement would limit the ability to engage in necessary health care operations functions.

The hybrid entity is also required to create adequate separation (i.e., fire walls) between the health care component(s) and other components of

the entity. Transfer of protected health information held by the health care component to other components of the hybrid entity is a disclosure under the Privacy Rule and is only allowed to the same extent as such disclosure would be permitted to a separate entity.

Examples of hybrid entities are: (1) corporations that are not in the health care industry, but that operate on-site health clinics, and (2) insurance carriers that have multiple lines of business which include both health insurance and other insurance lines such as general liability or property and casualty insurance.

A ''hybrid entity'' is defined in the Privacy Rule as an entity ''whose covered functions are not its *primary* functions.'' (emphasis added). In the preamble to the Privacy Rule, the Department explained that the use of the term ''primary'' in the definition of a ''hybrid entity'' was not intended to operate with mathematical precision. The Department intended a common sense evaluation of whether the covered entity mostly operates as a health plan, health care provider, or health care clearinghouse. If an entity's primary activity was engaging in covered functions, then the whole entity would be a covered entity and the hybrid entity provisions would not apply. However, if the covered entity primarily conducted non-health activities, it would qualify as a hybrid entity and would be required to comply with the Privacy Rule with respect to its health care component(s). Commenters expressed concern that the policy guidance in the preamble was insufficient as long as the Privacy Rule itself limited the hybrid entity provisions to entities that primarily conducted non-health related activities. There were particular concerns in cases in which the health plan line of business was the primary business, and the line of business that is one of the excepted benefits, *e.g.,* workers' compensation insurance, was only a small portion of the business. There were also concerns about what ''primary'' meant if not a mathematical calculation and how the entity would know whether or not it was a hybrid entity based on the guidance in the preamble.

As a result of these comments, the Department proposes to delete the term ''primary'' from the definition of ''hybrid entity'' in § 164.504(a). In order to avoid the problem of line drawing, the Department proposes to permit any covered entity to be a hybrid entity if it is a single legal entity that performs both covered and non-covered functions, regardless of whether the non-covered functions represent that entity's primary function, a substantial function, or even a small portion of the entity's activities.

The Department proposes to permit covered entities that could qualify as hybrid entities to choose whether or not they want to be hybrid entities. Elimination of the requirement in the definition of ''hybrid entity'' that covered functions not be the ''primary'' functions of the covered entity would greatly increase the proportion of covered entities that are hybrid entities. In order to avoid the burden of requiring many more covered entities to designate the health care components and create fire walls within their entity when it is administratively simpler to treat the entire entity as a covered entity, the proposal would allow the covered entity to choose whether it will be a hybrid entity or not. To accomplish this objective, the proposed definition of ''hybrid entity'' would require that in order to be a hybrid entity, a covered entity that otherwise qualifies must designate health care components. If a covered entity does not designate health care components, the entire entity would be a covered entity.

There are advantages and disadvantages to being a hybrid entity. Whether or not the advantages outweigh the disadvantages will be a decision of each covered entity that may qualify as a hybrid entity and will be influenced by factors such as how the entity is organized and the proportion of the entity that must be included in the health care component. Where the non-covered functions of the entity are only a small portion of the entity, it will likely be more efficient to simply consider the entire entity as a covered entity. Nonetheless, the Department is proposing to permit flexibility for covered entities to choose whether or not to be treated as a covered entity entirely or as a hybrid entity.

The Department also proposes to simplify the definition of ''health care component'' in § 164.504(a) to make clear that a health care component is whatever the covered entity designates as the health care component, consistent with the provisions regarding designation in § 164.504(c)(3)(iii). The specific language regarding which components make up a health care component would be in the implementation specification that addresses designation of health care components. The Department proposes to move this specific language because it provides requirements and directions that are more appropriately placed in an implementation specification. The Department proposes that health care components may include: (1) Components of the covered entity that engage in covered functions, and (2) any component that engages in activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

With respect to the components that perform covered functions, the Department also clarifies that a hybrid entity must include in its health care component(s) any component that would meet the definition of ''covered entity'' if it were a separate legal entity. ''Covered functions'' are those functions of a covered entity that make the entity a health plan, health care provider, or health care clearinghouse. However, there was some ambiguity as to whether a component of a covered entity that is a health care provider, but that does not conduct standard electronic transactions, must be included in the health care component. The proposed language would clarify that any component that would be a covered entity if it were a separate legal entity must be included in the health care component.

Under these proposed changes, a component that is a health care provider and that engages in standard electronic transactions must be included in the health care component, but a component that is a health care provider but that does not engage in standard electronic transactions may, but would not be required to, be included in the health care component of the hybrid entity. The decision would be left to the covered entity in the second case. For example, in a university setting, the single legal entity may operate hospital facilities that bill electronically and research laboratories that do not engage in any electronic billing. The modification would clarify that the university as a hybrid entity need only include the hospital facilities that bill electronically in the health care component. The modification also would make clear that the university has the option to include the components, such as the research laboratory, that function as a health care provider, but not as a covered health care provider. A covered entity that chooses to include a non-covered health care provider in their health care component would be required to ensure that the non-covered health care provider, as well as the rest of the health care component, is in compliance with the Privacy Rule.

There is also a conforming change in the proposed language in § 164.504(c)(1)(ii) to make it clear that a reference to a ''covered health care provider'' in the Privacy Rule could

include the functions of a health care provider who does not engage in electronic transactions, if the covered entity chooses to include such functions in the health care component.

With respect to the language regarding components that engage in ''business associate'' functions, the Department does not make any substantive change. The components of a hybrid that may provide services to the component that performs covered functions, such as a portion of the legal or accounting departments of the entity, may be included in the health care component so protected health information can be shared with such components of the entity without requiring business associate agreements or individual authorizations. The related language in paragraph (2)(ii) of the definition of ''health care component'' in the Privacy Rule that requires the ''business associate'' functions include the use of protected health information is not included in this proposed Rule because it is redundant.

It is important to note that a covered entity may include components that engage in ''business associate'' functions in its health care component or not. It is not a violation of the Privacy Rule to fail to include such a component in the health care component designation. However, a disclosure of protected health information from the health care component to such other component if it is not part of the health care component is the same as a disclosure outside the covered entity and is a violation unless it is permitted by the Privacy Rule. Because an entity cannot have a business associate contract with itself, such a disclosure likely would require individual authorization.

Finally, to avoid needless application of the hybrid entity provisions to a covered entity's activities as an employer, rather than as a health plan, health care provider, or health care clearinghouse, the Department proposes to modify the definition of ''protected health information'' in § 164.501. The preamble to the Privacy Rule makes clear that the Privacy Rule does not treat employment records as protected health information. To avoid any confusion or misinterpretation on this point, the Department proposes to expressly exclude employment records held by a covered entity in its role as employer from the definition of ''protected health information.'' In that way, employment records will be treated in the same manner as student medical records covered by FERPA, which the Privacy Rule excludes from the definition of ''protected health information.'' This change will limit the need for a covered entity, whose primary activities are covered functions, to designate itself as a hybrid entity simply to carve out employment records.

It is important to note that the exception from the definition of ''protected health information'' for employment records only applies to individually identifiable health information in those records that are held by a covered entity in its role as employer. The exception does not apply to individually identifiable health information held by a covered entity when carrying out its health plan or health care provider functions. Such information would be protected health information. The Department specifically is soliciting comments on whether the term ''employment records'' is clear or whether it needs to be more fully explained. It would be particularly helpful if commenters could identify certain types of records that should be included or excluded from ''employment records.''

7. Technical Corrections. The Privacy Rule contained some technical and typographical errors. Therefore, the Department proposes to make the following corrections:

a. In § 160.102(b), beginning in the second line, ''section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191),'' is replaced with ''42 U.S.C. 1320a–7c(a)(5)''.

b. In § 160.203(b), in the second line, ''health information'' is replaced with ''individually identifiable health information''.

c. In § 164.102, ''implementation standards'' is corrected to read ''implementation specifications.''

d. In § 164.501, in the definition of ''protected health information'', ''Family Educational Right and Privacy Act'' is corrected to read ''Family Educational Rights and Privacy Act.''

e. In § 164.508(b)(1)(ii), in the fifth line, the word ''be'' is deleted.

f. In § 164.508(b)(3)(iii), a comma is added after the words ''psychotherapy notes''.

g. In § 164.510(b)(3), in the third line, the word ''for'' is deleted.

h. In § 164.512(b)(1)(v)(A), in the fourth line, the word ''a'' is deleted.

i. In § 164.512(b)(1)(v)(C), in the eighth line, the word ''and'' is added after the semicolon.

j. In § 164.512(f)(3), paragraphs (ii) and (iii) are redesignated as (i) and (ii), respectively.

k. In § 164.512(g)(2), in the seventh line, the word ''to'' is added after the word ''directors.''

l. In § 164.512(i)(1)(iii)(A), in the second line, the word ''is'' after the word ''sought'' is deleted.

m. In § 164.522(a)(1)(v), in the sixth line, ''§§ 164.502(a)(2)(i)'' is corrected to read ''§§ 164.502(a)(2)(ii)''.

n. In § 164.530(i)(4)(ii)(A), in the second line, ''the requirements'' is replaced with the word ''specifications''.

IV. Preliminary Regulatory Impact Analysis

Federal law (5 U.S.C. 804(2), as added by section 251 of Pub. L. 104–21), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects in competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

The impact of the modifications proposed in this rulemaking would be a net reduction of costs associated with the Privacy Rule of approximately $100 million. Therefore, this Rule is a major rule as defined in 5 U.S.C. 804(2).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The purpose of the regulatory impact analysis is to assist decision-makers in understanding the potential ramifications of a regulation as it is being developed. The analysis is also intended to assist the public in understanding the general economic ramifications of the regulatory changes.

The Privacy Rule included a regulatory impact analysis (RIA), which estimated the cost of the Privacy Rule at $17.6 billion over ten years. 65 FR 82462, 82758. The changes to the Privacy Rule proposed by this notice of proposed rulemaking are a result of comment by the industry and the public at large identifying a number of unintended consequences of the Privacy

Rule that could adversely affect access to, or the quality of health care delivery. These proposed changes should facilitate implementation and compliance with the Privacy Rule, and lower the costs and burdens associated with the Privacy Rule while maintaining the confidentiality of protected health information.

The proposed changes would affect five areas of the Privacy Rule that will have an economic impact: (1) Consent; (2) notice; (3) marketing; (4) research; and (5) business associates. In addition, the proposal contains a number of changes that, though important, can be categorized as clarifications of intended policy. For example, the modifications would permit certain uses and disclosures of protected health information that are incidental to an otherwise permitted use or disclosure. This change would recognize such practices as the need for physicians to talk to patients in semi-private hospital rooms or nurses to communicate with others in public areas, and avoids the costs covered entities might have incurred to reconfigure facilities as necessary to ensure absolute privacy for these common treatment-related communications. This and other modifications in this proposal (other than those described below) clarify the intent of the standards in the Privacy Rule and, as such, do not change or alter the associated costs that were estimated for the Privacy Rule. There are no new costs or savings by these changes, and therefore, there is no cost estimate made here for them.

A. Summary of Costs and Benefits in Final Regulatory Impact Statement

The Privacy Rule was estimated to produce net costs of $17.6 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). The Department estimates the modifications in this proposal would lower the net cost of the Privacy Rule by approximately $100 million over ten years.

Measuring both the economic costs and benefits of health information privacy was recognized as a difficult task. The paucity of data and incomplete information on current industry privacy and information system practices made cost estimation a challenge. Benefits were difficult to measure because they are, for the most part, inherently intangible. Therefore, the regulatory impact analysis in the Privacy Rule focused on the key policy areas addressed by the privacy standards, some of which would be affected by the proposed modifications in this rulemaking.

B. Proposed Modifications To Prevent Barriers to Access to or Quality of Health Care

The changes proposed in this rulemaking are intended to address the possible adverse effects of the final privacy standards on an individual's access to, or the quality of, health care. The modifications touch on five of the key policy areas addressed by the final regulatory impact analysis, including consent, research, marketing, notice, and business associates.

Consent

Under the Privacy Rule, a covered health care provider with a direct treatment relationship with an individual must obtain the individual's prior written consent for use or disclosure of protected health information for treatment, payment, or health care operations, subject to a limited number of exceptions. Other covered health care providers and health plans may obtain such a consent if they so choose. The initial cost of the consent requirement was estimated to be $42 million. Based on assumptions for growth in the number of patients, the total costs for ten years was estimated to be $103 million. *See* 65 FR 82771 (December 28, 2000).[2]

The proposed modifications would eliminate the consent requirement. The consent requirement posed many difficulties for an individual's access to health care, and was problematic for operations essential for the quality of the health care delivery system. However, any health care provider or health plan may choose to obtain an individual's consent for treatment, payment, and health care operations. The elimination of the consent requirement reduces the initial cost of the privacy standards by $42 million in the first year and by $103 million over ten years.

As explained in detail in section III.A.1. above, many comments that the Department received in March 2001 and testimony before the NCVHS revealed that the consent requirements in the Privacy Rule create unintended barriers to timely provision of care, particularly with respect to use and disclosure of health information prior to a health care provider's first face-to-face contact with the individual. These and other barriers discussed above would have entailed costs not anticipated in the economic analyses in the Privacy Rule. These comments also revealed that the consent requirements create administrative burdens, for example, with respect to tracking the status and revocation of consents, that were not foreseen and thus not included in that economic analysis. Therefore, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

Notice

In eliminating the consent requirement, the Department proposes to preserve the opportunity for a covered health care provider with a direct treatment relationship with an individual to engage in a meaningful communication about the provider's privacy practices and the individual's rights by strengthening the notice requirements. Under the Privacy Rule, these health care providers are required to distribute to individuals their notice of privacy practices no later than the date of the first service delivery after the compliance date. The modifications would not change this distribution requirement, but would add a new documentation requirement. A covered health care provider with a direct treatment relationship would be required to make a good faith effort to obtain the individual's acknowledgment of receipt of the notice provided at the first service delivery. The form of the acknowledgment is not prescribed and can be as unintrusive as retaining a copy of the notice initialed by the individual. If the provider's good faith effort fails, documentation of the attempt is all that would be required. Since the modification would not require any change in the form of the notice or its distribution, the ten-year cost estimate of $391 million for these areas in the Privacy Rule's impact analysis remains the same. *See* 65 FR 82770 (December 28, 2000).

However, the additional effort by direct treatment providers in obtaining and documenting the individual's acknowledgment of receipt of the notice would add costs. This new requirement would attach only to the initial provision of notice by a direct treatment provider to an individual after the compliance date. Under the proposed modification, providers would have considerable flexibility on how to achieve this. Some providers could

[2] The total cost for consent in the regulatory impact analysis showed an initial cost of $166 million and $227 million over ten years. Included in these total numbers is the cost of tracking patient requests to restrict the disclosure of their health information. This right is not changed in these modifications. The numbers here represent the costs associated with the consent functions that are proposed to be repealed.

choose to obtain the required written acknowledgment on a separate piece of paper, while others could take different approaches, such as an initialed check-off sheet or a signature line on the notice itself with the provider keeping a copy.

In the original analysis, the Department estimated that the consent cost would be $0.05 per page based on the fact that the consent had to be a stand alone document requiring a signature. This proposed modification to the notice requirement would provide greater flexibility and, therefore, greater opportunity to reduce costs compared to the consent requirement. The Department estimates that the additional cost of the signature requirement, on average, would be $0.03 per notice. Based on data obtained from the Medical Expenditure Panel Survey (MEPS), which estimate the number of patient visits in a year, the Department estimates that in the first year there would be 816 million notices distributed, including the new additional information needed to acknowledge receipt of the notice. Over the next nine years, the Department estimates, again based on MEPS data, that there would be 5.3 billion visits to health care providers by new patients (established patients will not need to receive another copy of the notice). At $0.03 per document, the first year cost would be $24 million and the total cost over ten years would be $184 million.

Business Associates

The Privacy Rule requires a covered entity to have a written contract, or other arrangement that documents satisfactory assurances that a business associate will appropriately safeguard protected health information in order to disclose protected health information to the business associate. The regulatory impact analysis for the Privacy Rule provided cost estimates for two aspects of this requirement. In the Privacy Rule, $103 million in first-year costs was estimated for development of a standard business associate contract language. (There were additional costs associated with these requirements related to the technical implementation of new data transfer protocols, but these are not affected by the changes being proposed here.) In addition, $197 million in first-year costs and $697 million in total costs over ten years were estimated in the Privacy Rule for the review and oversight of existing business associate contracts.

The modifications do not change the standards for business associate contracts or the implementation specifications with respect to the covered entity's responsibilities for managing the contracts. However, as part of this proposal, the Department is including model business associate contract language. This model is only suggested language and is not a complete contract. The model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties. The final regulatory impact analysis assumed the development of such standard language by trade and professional associations. While this has, in fact, been occurring, the Department continues to receive requests for model contract language, particularly from small health care providers. The Department expects that trade and professional associations will continue to provide assistance to their members. However, the model contract language in this proposal will simplify their efforts by providing a base from which they can develop language. The Department had estimated $103 million in initial year costs for this activity based on the assumption it would require one hour per non-hospital provider and two hours for hospitals and health plans to develop contract language and to tailor the language to the particular needs of the covered entity. The additional time for hospitals and health plans reflected the likelihood that these covered entities would have a more extensive number of business associate relationships. Because there will be less effort expended than originally estimated in the Privacy Rule, the Department estimates a reduction in contract development time by one-third because of the availability of the model language. Thus, the Department now estimates that this activity will take 40 minutes for non-hospital providers and 80 minutes for hospitals and health plans. The Department estimates that the savings from the proposed business associate contract language would be approximately $35 million in the first year.

The Department is also proposing in this rulemaking to give covered entities additional time to review their existing business associate contracts and to conform written contracts to the privacy standards. Under the proposal, a covered entity's written business associate contracts, existing at the time the modifications become effective, would be deemed to comply with the privacy standards until such time as the contracts are renewed or modified or until April 14, 2004, whichever is earlier. The effect of this proposal would be to spread first year costs over an additional year, with a corresponding postponement of the costs estimated for the out years. However, the Department has no reliable information as to the number of contracts potentially affected by the modification or how long a delay may occur. Therefore, the Department does not compute any cost savings to this modification.

Marketing

Under § 164.514(e) of the Privacy Rule, certain health-related communications are subject to special conditions on marketing communications, if they also serve to promote the use or sale of a product or service. These marketing conditions require that particular disclosures be made as part of the marketing materials sent to individuals. Absent these disclosures, protected health information can only be used or disclosed in connection with such marketing communications with the individual's authorization. The Department is aware that the Privacy Rule's § 164.514(e) conditions for health-related communications create a potential burden on covered entities to make difficult assessments regarding many of their communications. The proposed modifications to the marketing provisions would relieve the burden on covered entities by making most marketing subject to an authorization requirement and eliminating the § 164.514(e) conditions on marketing communications.

In developing the final impact analysis for the Privacy Rule, the Department was unable to estimate the cost of the marketing provisions. There was too little data and too much variation in current practice to estimate how the Privacy Rule might affect marketing. The same remains true today. However, the proposed modifications would relieve burden on the covered entities in making communications for treatment and certain health care operations relative to the requirements in the Privacy Rule. Although the Department cannot provide a quantifiable estimate, the effect of these proposed changes will be to lower costs relative to the Privacy Rule.

Research

In the final impact analysis for the Privacy Rule, the Department estimated the total cost of the provisions requiring documentation of an Institutional Review Board (IRB) or Privacy Board waiver of individual authorization for the use or disclosure of protected health information for a research purpose as $40 million for the first year and $585

million for the ten-year period. The costs were estimated based on the time that an IRB or privacy board would need to consider a request for a waiver under the criteria provided in the Privacy Rule. See 65 FR 82770–82771 (December 28, 2000).

The proposed modification would simplify and reduce the number of criteria required for an IRB or Privacy Board to approve a waiver of authorization in three ways. First, the proposal would simplify the criteria for waivers to better conform to the Common Rule's waiver criteria for informed consent to participate in the research study. Second, the proposal would simplify the accounting procedures for research by eliminating the need to account for disclosures based on individual authorization. Third, the proposal would simplify the authorization process for research to facilitate the combining of the informed consent for participation in the research itself with all authorizations required under the Privacy Rule. Therefore, the Department estimates that the net effect of these modifications would be to reduce the time necessary to assemble the necessary waivers and for an IRB or Privacy Board to consider and act on waiver requests by one quarter. The Department estimates these simplifications would reduce the expected costs first year costs by $10 million and the ten year costs by $146 million, relative to the Privacy Rule. Since this initial estimate is based on limited information available to the Department, the Department requests information to better assess this cost savings.

PRIVACY RULE MODIFICATIONS—TEN-YEAR COST ESTIMATES

Policy	Original Cost	Modification	Change due to modification
Consent	$103 million	Provision removed	−$103 million.[1]
Notice	$391 million	Good faith effort to obtain acknowledgment of receipt .	+$184 million.
Marketing	Not scored due to lack of data .	Fewer activities constitute marketing .	Reduction in cost but magnitude cannot be estimated.
Business Associates	$103 million for contract modifications .	Model language provided	−$35 million.
Research	$585 million	Waiver requirements simplified .	−$146 million.
Net Change			−$100 million.

[1] As noted above in the discussion on consent, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

C. Costs to the Federal Government

The proposed changes in this Rule will result in small savings to the federal government relative to the costs that would have occurred under the Privacy Rule. Although there will be some increase in costs for the new requirements for obtaining acknowledgment for receipt of the notice, these costs are partially offset by the savings in the elimination of the consent. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. The Department does not believe the federal government engages in significant marketing as defined in the Privacy Rule. The federal government will have business associates under the Privacy Rule, and therefore, the model language proposed in this rulemaking will be of benefit to federal departments and agencies. The Department has not estimated the federal government's portion of the $35 million savings it estimated for this change. Similarly, the federal government, which conducts and sponsors a significant amount of research that is subject to IRBs, will realize some savings as a result of the research modifications proposed in this rulemaking. The Department does not have sufficient information, however, to estimate the federal government's portion of the total $146 million savings with respect to research modifications.

D. Costs to State and Local Government

The proposed changes also may affect the costs to state and local governments. However, these effects likely will be small. As with the federal government, state and local governments will have any costs of the additional notice requirement offset by the savings realized by the elimination of the consent requirement. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. State and local governments could realize savings from the model language for business associates and the changes in research, but the savings are likely to be small. The Department does not have sufficient information to estimate the state and local government's share of the net savings from the proposed changes.

E. Benefits

The benefits of these modifications would be lower costs, and enhanced implementation and compliance with the Privacy Rule without compromising the protection of individually identifiable health information or access to quality health care.

F. Alternatives

In July 2001, the Department clarified the Privacy Rule in guidance, where feasible, to resolve some of the issues raised by commenters. Issues that could not adequately be addressed through guidance because of the need for a regulatory change are addressed in this proposed Rule. The Department examined a number of alternatives to these proposed provisions. One alternative was to not make any changes to the Privacy Rule, but this option was rejected for the reasons explained throughout the preamble. The Department also considered various alternatives to specific provisions in the development of this proposed Rule. These alternatives are generally discussed above, where appropriate.

V. Preliminary Regulatory Flexibility Analysis

The Department also examined the impact of this proposed Rule as required

by the Small Business Regulatory Enforcement and Fairness Act (SBREFA) (5 U.S.C. 601, *et seq.*). SBREFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities.

The law does not define the thresholds to use in implementing the law and the Small Business Administration discourages establishing quantitative criteria. However, the Department has long used two criteria—the number of entities affected and the impact on revenue and costs—for assessing whether a regulatory flexibility analysis is necessary. Department guidelines state that an impact of three to five percent should be considered a significant economic impact. Based on these criteria, the Department has determined that a regulatory flexibility analysis is not required.

As described in the Regulatory Flexibility Analysis for the Privacy Rule, most covered entities are small businesses—approximately 465,000. *See* Table A, 65 FR 82780 (December 28, 2000). Lessening the burden for small entities, consistent with the intent of protecting privacy, was an important consideration in developing these modifications. However, as discussed in the Preliminary Regulatory Impact Analysis, above, the net affect of the proposed changes is an overall savings of approximately $100 million over ten years. Even if all of this savings were to accrue to small entities (an over estimation), the impact per small entity would be de minimis.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, the Department is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency.
- The accuracy of the estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In accordance with these requirements, the Department is soliciting public comments on the model business associate contract language displayed in the Appendix to this proposed Rule. The Department provides these model business associate contract provisions in response to numerous requests for guidance. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. Nor is the model language a complete contract. Rather, the model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties.

Section 164.506—Consent for Treatment, Payment, and Health Care Operations

Under the Privacy Rule, a covered health care provider that has a direct treatment relationship with individuals must, except in certain circumstances, obtain an individual's consent to use or disclose protected health information to carry out treatment, payment, and health care operations. The modifications would eliminate this requirement. While the consent requirement is subject to the PRA, the Department believes that the burden associated with the requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2). Therefore, the modification does not affect the paperwork burden associated with the Privacy Rule.

Section 164.520—Notice of Privacy Practices for Protected Health Information

The modifications would impose a good faith effort on direct treatment providers to obtain an individual's acknowledgment of receipt of the notice of privacy practices for protected health information and to document such acknowledgment or, in the absence of such acknowledgment, the entity's good faith efforts to obtain it. In addition, a covered entity would have to retain the acknowledgment or documentation of the good faith effort as required by § 164.530(j). The Department is continuing to work on estimating the burden imposed by the Privacy Rule. The estimate for the acknowledgment of receipt of the notice will be reflected in the paperwork reduction package to be submitted to OMB as required by the PRA.

The Department has submitted a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Center for Medicaid and Medicare Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke, HIPAA Privacy;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Herron Eydt, CMS Desk Officer.

VII. Unfunded Mandates

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 by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million in a single year. A final cost-benefit analysis was published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82794). In developing the final Privacy Rule, the Department adopted the least burdensome alternatives, consistent with achieving the Rule's goals. The Department does not believe that the modifications in the proposed Rule would qualify as an unfunded mandate under the statute.

VIII. Environmental Impact

The Department has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent Privacy Rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published in the Privacy Rule of

December 28, 2000 (65 FR 82462, 82797). The proposed change with the most direct effect on federalism principles concerns the clarifications regarding the rights of parents and minors under State law. The modifications would make clear the intent of the Department to defer to State law with respect to such rights. Therefore, the Department believes that the modifications in this proposed Rule would not significantly affect the rights, roles and responsibilities of States.

Appendix to the Preamble—Model Business Associate Contract Provisions

Introduction

The Department of Health and Human Services provides these model business associate contract provisions in response to numerous requests for guidance. This is only model language. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. The language may be amended to more accurately reflect business arrangements between the covered entity and the business associate.

These or similar provisions may be incorporated into an agreement for the provision of services between the entities or they may be incorporated into a separate business associate agreement. These provisions only address concepts and requirements set forth in the Privacy Rule and alone are not sufficient to result in a binding contract under State law and do not include many formalities and substantive provisions that are required or typically included in a valid contract. Reliance on this model is not sufficient for compliance with state law and does not replace consultation with a lawyer or negotiations between the parties to the contract.

Furthermore, a covered entity may want to include other provisions that are related to the Privacy Rule but that are not required by the Privacy Rule. For example, a covered entity may want to add provisions in a business associate contract in order for the covered entity to be able to rely on the business associate to help the covered entity meet its obligations under the Privacy Rule. In addition, there may be permissible uses or disclosures by a business associate that are not specifically addressed in these model provisions. For example, the Privacy Rule does not preclude a business associate from disclosing protected health information to report unlawful conduct in accordance with § 164.502(j). However, there is not a specific model provision related to this permissive disclosure. These and other types of issues will need to be worked out between the parties.

Model Business Associate Contract Provisions [1]

Definitions (alternative approaches)

Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

Examples of specific definitions:

(a) *Business Associate.* ''Business Associate'' shall mean [Insert Name of Business Associate].

(b) *Covered Entity.* ''Covered Entity'' shall mean [Insert Name of Covered Entity].

(c) *Individual.* ''Individual'' shall have the same meaning as the term ''individual'' in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) *Privacy Rule.* ''Privacy Rule'' shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(e) *Protected Health Information.* ''Protected Health Information'' shall have the same meaning as the term ''protected health information'' in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law.* ''Required By Law'' shall have the same meaning as the term ''required by law'' in 45 CFR 164.501.

(g) *Secretary.* ''Secretary'' shall mean the Secretary of the Department of Health and Human Services or his designee.

Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. [This provision may be included if it is appropriate for the Covered Entity to pass on its duty to mitigate damages by a Business Associate.]

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. [Not necessary if business associate does not have protected health information in a designated record set.]

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. [Not necessary if business associate does not have protected health information in a designated record set.]

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section [Insert Section Number in Contract Where Provision (i) Appears] of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions (alternative approaches)

Specify purposes:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity: [List Purposes].

Refer to underlying services agreement:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

[1] Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these model provisions and are not intended to be included in the contractual provisions.

Specific Use and Disclosure Provisions [only necessary if parties wish to allow Business Associate to engage in such activities]

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. [Include an exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate].

Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate has breached a material term of this Agreement and cure is not possible. [Bracketed language in this provision may be necessary if there is an underlying services agreement. Also, opportunity to cure is permitted, but not required by the Privacy Rule.]

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104–191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section [Insert Section Number Related to ''Effect of Termination''] of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

List of Subjects

45 CFR Part 160

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

45 CFR Part 164

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

Dated: March 12, 2002.

Tommy G. Thompson,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend 45 CFR Subtitle A, Subchapter C, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 continues to read as follows:

Authority: Sec. 1171 through 1179 of the Social Security Act, (42 U.S.C. 1320d–1329d–8) as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031 and sec. 264 of Pub. L. 104–191 (42 U.S.C. 1320d–2(note)).

§ 160.102 [Amended]

2. Amend § 160.102(b), by removing the phrase ''section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191)'' and adding in its place the phrase ''the Social Security Act, 42 U.S.C. 1320a–7c(a)(5)''.

3. In § 160.103 add the definition of ''individually identifiable health information'' in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the

information can be used to identify the individual.

* * * * *

4. In § 160.202 revise paragraphs (2) and (4) of the definition of ''more stringent'' to read as follows:

§ 160.202 Definitions.

* * * * *

More stringent means * * *

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

* * * * *

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

* * * * *

§ 160.203 [Amended]

5. Amend § 160.203(b) by adding the words ''individually identifiable'' before the word ''health''.

PART 164—SECURITY AND PRIVACY

Subpart E—Privacy of Individually Identifiable Health Information

1. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)).

§ 164.102 [Amended]

2. Amend § 164.102 by removing the words ''implementation standards'' and adding in its place the words ''implementation specifications.''

§ 164.500 [Amended]

3. In § 164.500, remove ''consent,'' from paragraph (b)(1)(v).

§ 164.501 [Amended]

4. Amend § 164.501 as follows:

a. In the definition of ''health care operations'' remove from the introductory text of the definition '', and any of the following activities of an organized health care arrangement in which the covered entity participates'' and revise paragraphs (6)(iv) and (v).

b. Remove the definition of ''individually identifiable health information''.

c. Revise the definition of ''marketing''.

d. In paragraph (1)(ii) of the definition of ''payment,'' remove the word ''covered''.

e. Revise paragraph (2) of the definition of ''protected health information''.

The revisions read as follows:

§ 164.501 Definitions.

* * * * *

Health care operations means * * *

(6) * * *

(iv) The sale, transfer, merger, or consolidation of all or part of a covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information and fundraising for the benefit of the covered entity.

* * * * *

Marketing means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service. *Marketing* excludes a communication made to an individual:

(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or services (or payment for such product or service) is provided by a covered entity or included in a plan of benefits;

(2) For treatment of that individual; or

(3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.

* * * * *

Protected health information means * * *

(2) *Protected health information* excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

* * * * *

5. Amend § 164.502 as follows:

a. Revise paragraphs (a)(1)(ii), (iii), and (vi).

b. Revise paragraph (b)(2)(ii).

c. Redesignate paragraphs (b)(2)(iii) through (v) as paragraphs (b)(2)(iv) through (vi).

d. Add a new paragraph (b)(2)(iii).

e. Redesignate paragraphs (g)(3)(i) through (iii) as (g)(3)(i)(A) through (C) and redesignate paragraph (g)(3) as (g)(3)(i).

f. Add new paragraphs (g)(3)(ii) and (iii).

The revisions and additions read as follows:

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) *Standard.* * * *

(1) *Permitted uses and disclosures.* * * *

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) As incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required uses or disclosures;

* * * * *

(vi) As permitted by and in compliance with this section, § 164.512, or § 164.514(f) and (g).

* * * * *

(b) *Standard: Minimum necessary.* * * *

(2) *Minimum necessary does not apply.* * * *

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

* * * * *

(g)(1) *Standard: Personal representatives.* * * *

(3) *Implementation specification: unemancipated minors.*

(i) * * *

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) A covered entity may disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure; and

(B) A covered entity may not disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, prohibits such disclosure.

(iii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section, a covered entity must, consistent with State or other applicable law, provide a right of access, as set forth in § 164.524 to either:

(A) A parent, guardian, or other person acting *in loco parentis,* as the personal representative of the unemancipated minor;

(B) The unemancipated minor; or

(C) Both.

* * * * *

6. Amend § 164.504 as follows:

a. In paragraph (a), revise the definitions of ''health care component'' and ''hybrid entity''.

b. Revise paragraph (c)(1)(ii).

c. Revise paragraph (c)(3)(iii).

d. Revise paragraph (f)(1)(i).

e. Add paragraph (f)(1)(iii).

The revisions and addition read as follows:

§ 164.504 Uses and disclosures: Organizational requirements.

(a) *Definitions.* * * *

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with paragraph (c)(3)(iii) of this section.

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

(3) That designates health care components in accordance with paragraph (c)(3)(iii) of this section.

* * * * *

(c)(1) *Implementation specification: Application of other provisions.* * * *

(ii) A reference in such provision to a ''health plan,'' ''covered health care provider,'' or ''health care clearinghouse'' refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable; and

* * * * *

(3) *Implementation specifications: Responsibilities of the covered entity.* * * *

(iii) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation as required by § 164.530(j), provided that if the covered entity designates a health care component or components, it must include any component that would meet the definition of covered entity if it were a separate legal entity. Health care component(s) may include a component that performs:

(A) covered functions; and

(B) activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

* * * * *

(f)(1) *Standard: Requirements for group health plans.* (i) Except as provided under paragraph (f)(1)(ii) or (iii) of this section or as otherwise authorized under § 164.508, a group health plan, in order to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of this subpart.

* * * * *

(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan to the plan sponsor.

* * * * *

7. Revise § 164.506 to read as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) *Standard: Consent permitted.* (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent of an individual under this paragraph shall not be effective to permit a use or disclosure of protected health information that is not otherwise permitted or required by this subpart.

(c) *Implementation specifications: Treatment, payment, or health care operations.*

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of another health care provider.

(3) A covered entity may disclose protected health information to another covered entity or health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if both entities have a relationship with the individual who is the subject of the protected health information being requested, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

8. Amend § 164.508 as follows:

a. Remove ''consistent with consent requirements in § 164.506'' in paragraph (a)(2)(i).

b. Add ''the'' before ''originator'' in paragraph (a)(2)(i)(A).

c. Remove the word ''in'' after the term ''covered entity'' and add in its place the words ''for its own'' in paragraph (a)(2)(i)(B).

d. Add the words ''itself in'' after the word ''defend'' in paragraph (a)(2)(i)(C).

e. Add paragraph (a)(3).

f. Revise paragraphs (b)(1)(i).

g. Remove the word ''be'' in paragraph (b)(1)(ii).

h. Remove '', (d), (e), or (f)'' from paragraph (b)(2)(ii).

i. Remove paragraph (b)(2)(iv).

j. Redesignate paragraphs (b)(2)(v) and (vi) as paragraphs (b)(2)(iv) and (v).

k. Add ''or (4)'' after ''(b)(3)'' in redesignated paragraph (b)(2)(iv).

l. Revise paragraphs (b)(3)(i).

m. Add a comma after the term ''psychotherapy notes'' in paragraph (b)(3)(iii).

n. Remove ''under paragraph (f) of'' and add in its place ''for the use or disclosure of protected health information for such research under'' in paragraph (b)(4)(i).

o. Add the word ''and'' at the end of paragraph (b)(4)(ii)(B).

p. Remove paragraph (b)(4)(iii).

q. Redesignate paragraph (b)(4)(iv) as paragraph (b)(4)(iii).

r. Add ''or the policy itself'' after the word ''policy'' in paragraph (b)(5)(ii).

s. Remove paragraphs (d), (e), and (f).

t. Revise paragraph (c).

The revisions and addition read as follows:

§ 164.508 Uses and disclosures for which an authorization is required.

(a) *Standard: Authorizations for uses and disclosures.* * * *

(3) *Authorization required: Marketing.* (i) Notwithstanding any other provision of this subpart other than § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is expected.

* * * * *

(b) *Implementation specifications:* General requirements. * * *

(1) *Valid authorizations.*

(i) A valid authorization is a document that meets the requirements in paragraphs (c)(1) and (2) of this section.

* * * * *

(3) *Compound authorizations.* * * *

(i) An authorization for the use or disclosure of protected health information for a specific research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

* * * * *

(c) *Implementation specifications: Core elements and requirements.* (1) *Core elements.* A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement ''at the request of the individual'' is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The following statements meet the requirements for an expiration date or an expiration event if the appropriate conditions apply:

(A) The statement ''end of the research study'' or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research.

(B) The statement ''none'' or similar language is sufficient if the authorization is for the covered entity to use or disclose protected health information for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) *Required statements.* In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this rule.

(3) *Plain language requirement.* The authorization must be written in plain language.

(4) *Copy to the individual.* If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

9. Amend § 164.510 as follows:

a. Revise the first sentence of the introductory text.

b. Remove the word ''for'' from paragraph (b)(3).

The revision reads as follows:

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. * * *

* * * * *

10. Amend § 164.512 as follows:

a. Revise the section heading and the first sentence of the introductory text.

b. Revise paragraph (b)(1)(iii).

c. In paragraph (b)(1)(v)(A) remove the word ''a'' before the word ''health.''

d. Add the word ''and'' after the semicolon at the end of paragraph (b)(1)(v)(C).

e. Redesignate paragraphs (f)(3)(ii) and (iii) as (f)(3)(i) and (ii).

f. In the second sentence of paragraph (g)(2) add the word ''to'' after the word ''directors.''

g. In paragraph (i)(1)(iii)(A) remove the word ''is'' after the word ''disclosure.''

h. Revise paragraph (i)(2)(ii).

The revisions read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section,

subject to the applicable requirements of this section. * * *

* * * * *

(b) *Standard: uses and disclosures for public health activities.*

(1) *Permitted disclosures.* * * *

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

* * * * *

(i) *Standard: Uses and disclosures for research purposes.* * * *

(2) *Documentation of waiver approval.* * * *

(ii) *Waiver criteria.* A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(*1*) An adequate plan to protect the identifiers from improper use and disclosure;

(*2*) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(*3*) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

* * * * *

11. Amend § 164.514 as follows:

a. Revise paragraph (b)(2)(i)(R).

b. Revise paragraph (d)(1).

c. Revise paragraph (d)(4)(iii).

d. Remove and reserve paragraph (e).

The revisions read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * *

(b) *Implementation specifications: Requirements for de-identification of protected health information.* * * *

(2)(i) * * *

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

* * * * *

(d)(1) *Standard: minimum necessary requirements.* In order to comply with § 164.502(b) and this section, a covered entity must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for or the use and disclosure of protected health information.

* * * * *

(4) *Implementation specifications: Minimum necessary requests for protected health information.* * * *

(iii) For all other requests, a covered entity must:

(A) Develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

* * * * *

(e) [Removed and Reserved]

* * * * *

12. Amend § 164.520 as follows:

a. Remove the word ''consent or'' from paragraph (b)(1)(ii)(B).

b. Revise paragraph (c)(2)(i).

c. Redesignate paragraphs (c)(2)(ii) and (iii) as (c)(2)(iii) and (iv).

d. Add new paragraph (c)(2)(ii).

e. Amend redesignated paragraph (c)(2)(iv) by removing ''(c)(2)(ii)'' and adding in its place ''(c)(2)(iii)'.

f. Revise paragraph (c)(3)(iii) by adding a sentence at the end.

g. Revise paragraph (e).

The revisions and addition read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(c) *Implementation specifications: provision of notice.* * * *

(2) *Specific requirements for certain covered health care providers.* * * *

(i) Provide the notice:

(A) No later than the date of the first service delivery, including service delivered electronically, to such individual after the compliance date for the covered health care provider; or

(B) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.

(ii) Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice provided in accordance with paragraph (c)(2)(i) of this section, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained;

* * * * *

(3) *Specific requirements for electronic notice.* * * *

(iii) * * * The requirements in paragraph (c)(2)(ii) of this section apply to electronic notice.

* * * * *

(e) *Implementation specifications: Documentation.* A covered entity must document compliance with the notice requirements, as required by § 164.530(j), by retaining copies of the notices issued by the covered entity and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment, in accordance with paragraph (c)(2)(ii) of this section.

§ 164.522 [Amended]

13. Amend § 164.522 by removing the reference to ''164.502(a)(2)(i)'' in paragraph (a)(1)(v), and adding in its place ''164.502(a)(2)(ii)''.

14. Amend § 164.528 as follows:

a. In paragraph (a)(1)(i), remove ''§ 164.502'' and add in its place ''§ 164.506''.

b. Redesignate paragraphs (a)(1)(iii) through (vi) as (a)(1)(iv) through (vii).

c. Add paragraph (a)(1)(iii).

d. Revise paragraph (b)(2)(iv) in its entirety.

e. Remove ''or pursuant to a single authorization under § 164.508,'' from paragraph (b)(3).

The addition and revision read as follows:

§ 164.528 Accounting of disclosures of protected health information.

(a) *Standard: Right to an accounting of disclosures of protected health information.*

(1) * * *

(iii) Pursuant to an authorization as provided in § 164.508.

* * * * *

(b) Implementation specifications: Content of the accounting. * * *

(2) * * *

(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.

* * * * *

15. Amend § 164.530 as follows:

a. Redesignate paragraph (c)(2) as (c)(2)(i).

b. Add paragraph (c)(2)(ii).

c. Remove the words ''the requirements'' from paragraph (i)(4)(ii)(A) and add in their place the word ''specifications.''

The addition reads as follows:

§ 164.530 Administrative requirements.

* * * * *

(c) *Standard: Safeguards.* * * *

(2) *Implementation specifications: Safeguards.* (i) * * *

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

* * * * *

16. Revise § 164.532 to read as follows:

§ 164.532 Transition Provisions.

(a) *Standard: Effect of prior authorizations.* Notwithstanding §§ 164.508 and 164.512(i), a covered entity may use or disclose protected health information, consistent with paragraphs (b) and (c) of this section, pursuant to an authorization or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, informed consent of the individual to participate in research, or a waiver of informed consent by an IRB.

(b) *Implementation specification: Effect of prior authorization for purposes other than research.* Notwithstanding any provisions in § 164.508, a covered entity may use or disclose protected health information that it created or received prior to the applicable compliance date of this subpart pursuant to an authorization or other express legal permission obtained from an individual prior to the applicable compliance date of this subpart, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction in accordance with § 164.522(a).

(c) *Implementation specification: Effect of prior permission for research.* Notwithstanding any provisions in §§ 164.508 and 164.512(i), a covered entity may use or disclose, for a specific research study, protected health information that it created or received either before or after the applicable compliance date of this subpart, provided that there is no agreed-to restriction in accordance with § 164.522(a) and that the covered entity has obtained, prior to the applicable compliance date, either:

(1) The authorization or other express legal permission from an individual to use or disclose protected health information for the research study;

(2) The informed consent of the individual to participate in the research study; or

(3) A waiver, by an IRB, of informed consent for the research study, in accordance with 7 CFR 1c.116(d), 10 CFR 745.116(d), 14 CFR 1230.116(d), 15 CFR 27.116(d), 16 CFR 1028.116(d), 21 CFR 50.24, 22 CFR 225.116(d), 24 CFR 60.116(d), 28 CFR 46.116(d), 32 CFR 219.116(d), 34 CFR 97.116(d), 38 CFR 16.116(d), 40 CFR 26.116(d), 45 CFR 46.116(d), 45 CFR 690.116(d), or 49 CFR 11.116(d), provided that a covered entity must obtain authorization in accordance with § 164.508 if, after the compliance date, informed consent is sought from an individual participating in the research study.

(d) *Standard: Effect of prior contracts or other arrangements with business associates.* Notwithstanding any other provisions of this subpart, a covered entity, other than a small health plan, may disclose protected health information to a business associate and may allow a business associate to create, receive, or use protected health information on its behalf pursuant to a written contract or other written arrangement with such business associate that does not comply with §§ 164.502(e) and 164.504(e) consistent with the requirements, and only for such time, set forth in paragraph (e) of this section.

(e) *Implementation specification: Deemed compliance.*—(1) *Qualification.* Notwithstanding other sections of this subpart, a covered entity, other than a small health plan, is deemed to be in compliance with the documentation and contract requirements of §§ 164.502(e) and 164.504(e), with respect to a particular business associate relationship, for the time period set forth in paragraph (e)(2) of this section, if:

(i) Prior to the effective date of this provision, such covered entity has entered into and is operating pursuant to a written contract or other written arrangement with a business associate for such business associate to perform functions or activities or provide services that make the entity a business associate; and

(ii) The contract or other arrangement is not renewed or modified from the effective date of this provision and until the compliance date set forth in § 164.534.

(2) *Limited deemed compliance period.* A prior contract or other arrangement that meets the qualification requirements in paragraph (e) of this section, shall be deemed compliant until the earlier of:

(i) The date such contract or other arrangement is renewed or modified on or after the compliance date set forth in § 164.534; or

(ii) April 14, 2004.

(3) *Covered entity responsibilities.* Nothing in this section shall alter the requirements of a covered entity to comply with part 160, subpart C of this subchapter and §§ 164.524, 164.526, and 164.528 with respect to protected health information held by a business associate.

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Part II

Department of Health and Human Services

45 CFR Parts 160 and 164
Office of the Secretary; Standards for Privacy of Individually Identifiable Health Information; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB14

Standards for Privacy of Individually Identifiable Health Information

AGENCY: Office for Civil Rights, HHS.

ACTION: Proposed rule; modification.

SUMMARY: The Department of Health and Human Services (HHS) proposes to modify certain standards in the Rule entitled ''Standards for Privacy of Individually Identifiable Health Information'' (the ''Privacy Rule''). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

The purpose of this action is to propose changes that maintain strong protections for the privacy of individually identifiable health information while clarifying misinterpretations, addressing the unintended negative effects of the Privacy Rule on health care quality or access to health care, and relieving unintended administrative burden created by the Privacy Rule.

DATES: To assure consideration, written comments mailed to the Department as provided below must be postmarked no later than April 26, 2002, and written comments hand delivered to the Department and comments submitted electronically must be received as provided below, no later than 5 p.m. on April 26, 2002.

ADDRESSES: Comments will be considered only if provided through any of the following means:

1. Mail written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

2. Deliver written comments (1 original and, if possible, 3 copies and a floppy disk) to the following address: Attention: Privacy 2, Hubert H. Humphrey Building, Room 425A, 200 Independence Avenue, SW., Washington, DC 20201.

3. Submit electronic comments at the following Web site: *http://www.hhs.gov/ocr/hipaa/.*

See the **SUPPLEMENTARY INFORMATION** section for further information on comment procedures, availability of copies, and electronic access.

FOR FURTHER INFORMATION CONTACT: Felicia Farmer 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

SUPPLEMENTARY INFORMATION: Comment procedures, availability of copies, and electronic access.

Comment Procedures: All comments should include the full name, address, and telephone number of the sender or a knowledgeable point of contact. Comments should address only those sections of the Privacy Rule for which modifications are being proposed or for which comments are requested. Comments on other sections of the Privacy Rule will not be considered, except insofar as they pertain to the standards for which modifications are proposed or for which comments are requested. Each specific comment should specify the section of the Privacy Rule to which it pertains.

Written comments should include 1 original and, if possible, 3 copies and an electronic version of the comments on a 3½ inch DOS format floppy disk in HTML, ASCII text, or popular word processor format (Microsoft Word, Corel WordPerfect). All comments and content must be limited to the 8.5 inches wide by 11.0 inches high vertical (also referred to as ''portrait'') page orientation. Additionally, if identical/duplicate comment submissions are submitted both electronically at the specified Web site and in paper form, the Department requests that each submission clearly indicate that it is a duplicate submission.

Because of staffing and resource limitations, the Department will not accept comments by telephone or facsimile (FAX) transmission. Any comments received through such media will be deleted or destroyed, as appropriate, and not be considered as public comments. The Department will accept electronic comments only as submitted through the Web site identified in the **ADDRESSES** section above. No other form of electronic mail will be accepted or considered as public comment. In addition, when mailing written comments, the public is encouraged to submit comments as early as possible due to potential delays in mail service.

Inspection of Public Comments: Comments that are timely received in proper form and at one of the addresses specified above will be available for public inspection by appointment as they are received, generally beginning approximately three weeks after publication of this document, at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 4 p.m. Appointments may be made by telephoning 1–866–OCR–PRIV (1–866–627–7748) or TTY 1–866–788–4989.

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I. Background

A. Statutory Background

Congress recognized the importance of protecting the privacy of health information given the rapid evolution of health information systems in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which became law on August 21, 1996. HIPAA's Administrative Simplification provisions, sections 261 through 264 of the statute, were designed to improve the efficiency and effectiveness of the health care system by facilitating the electronic exchange of information with respect to financial and administrative transactions carried out by health plans, health care clearinghouses, and health care providers who transmit information electronically in connection with such transactions. To implement these provisions, the statute directed HHS to adopt a suite of uniform, national standards for transactions, unique health identifiers, code sets for the data elements of the transactions, security of health information, and electronic signature.

At the same time, Congress recognized the challenges to the

confidentiality of health information presented by the increasing complexity of the health care industry, and by advances in the health information systems technology and communications. Thus, the Administrative Simplification provisions of HIPAA authorized the Secretary to promulgate regulations on standards for the privacy of individually identifiable health information if Congress did not enact health care privacy legislation by August 21, 1999. HIPAA also required the Secretary of HHS to provide Congress with recommendations for protecting the confidentiality of health care information. The Secretary submitted such recommendations to Congress on September 11, 1997, but Congress was unable to act within its self-imposed deadline.

With respect to these regulations, HIPAA provided that the standards, implementation specifications, and requirements established by the Secretary not supersede any contrary State law that imposes more stringent privacy protections. Additionally, Congress required that HHS consult with the National Committee on Vital and Health Statistics, a Federal Advisory committee established pursuant to section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)), and the Attorney General in the development of HIPAA privacy standards.

After a set of standards is adopted by the Department, HIPAA provides HHS with authority to modify the standards as deemed appropriate, but not more frequently than once every 12 months. However, modifications are permitted during the first year after adoption of the standard if the changes are necessary to permit compliance with the standard. HIPAA also provides that compliance with modifications to standards or implementation specifications must be accomplished by a date designated by the Secretary, which may not be earlier than 180 days from the adoption of the modification.

B. Regulatory and Other Actions to Date

As Congress did not enact legislation regarding the privacy of individually identifiable health information prior to August 21, 1999, HHS published a proposed Rule setting forth such standards on November 3, 1999 (64 FR 59918). The Department received more than 52,000 public comments in response to the proposal. After reviewing and considering the public comments, HHS issued a final Rule (65 FR 82462) on December 28, 2000, establishing ''Standards for Privacy of Individually Identifiable Health Information'' (''Privacy Rule'').

In an era where consumers are increasingly concerned about the privacy of their personal information, the Privacy Rule creates for the first time national protections for the privacy of their most sensitive information—health information. Congress has passed other laws to protect consumer's personal information contained in bank, credit card, other financial records, and even video rentals. These health privacy protections are intended to provide consumers with similar assurances that their health information, including genetic information, will be properly protected. Under the Privacy Rule, health plans, health care clearinghouses, and certain health care providers must guard against misuse of individuals' identifiable health information and limit the sharing of such information, and consumers are afforded significant new rights to understand and control how their health information is used and disclosed.

After publication of the Privacy Rule, HHS received many inquiries and unsolicited comments through telephone calls, e-mails, letters, and other contacts about the impact and operation of the Privacy Rule on numerous sectors of the health care industry. Many of these commenters exhibited substantial confusion over how the Privacy Rule will operate; others expressed great concern over the complexity of the Privacy Rule. In response to these communications and to ensure that the provisions of the Privacy Rule would protect patients' privacy without creating unanticipated consequences that might harm patients' access to health care or quality of health care, the Secretary of HHS requested comment on the Privacy Rule in March 2001 (66 FR 12738). After an expedited review of the comments by the Department, the Secretary decided that it was appropriate for the Privacy Rule to become effective on April 14, 2001, as scheduled (65 FR 12433). At the same time, the Secretary directed the Department immediately to begin the process of developing guidelines on how the Privacy Rule should be implemented and to clarify the impact of the Privacy Rule on health care activities. In addition, the Secretary charged the Department with proposing appropriate changes to the Privacy Rule during the next year to clarify the requirements and correct potential problems that could threaten access to, or quality of, health care. The comments received during the comment period, as well as other communications from the public and all sectors of the health care industry, including letters, testimony at public hearings, and meetings requested by these parties, have helped to inform the Department's efforts to develop proposed modifications and guidance on the Privacy Rule.

On July 6, 2001, the Department issued its first guidance to answer common questions and clarify certain of the Privacy Rule's provisions. In the guidance, the Department also committed to proposing modifications to the Privacy Rule to address problems arising from unintended effects of the Privacy Rule on health care delivery and access. The guidance is available on the HHS Office for Civil Rights (OCR) Privacy Web site at *http://www.hhs.gov/ocr/hipaa/*.

II. Overview of the Proposed Rule

As described above, through public comments, testimony at public hearings, meetings at the request of industry and other stakeholders, as well as other communications, the Department learned of a number of concerns about the potential unintended effect certain provisions would have on health care delivery and access. In response to these concerns, and pursuant to HIPAA's provisions for modifications to the standards, the Department is proposing modifications to the Privacy Rule.

In addition, the National Committee for Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality, held public hearings on the implementation of the Privacy Rule on August 21–23, 2001, and January 24–25, 2002, and provided recommendations to the Department based on these hearings. The NCVHS serves as the statutory advisory body to the Secretary of HHS with respect to the development and implementation of the Rules required by the Administrative Simplification provisions of HIPAA, including the privacy standards. Through the hearings, the NCVHS specifically solicited public input on issues related to certain key standards in the Privacy Rule: consent, minimum necessary, marketing, fundraising, and research. The resultant public testimony and subsequent recommendations submitted to the Department by the NCVHS also served to inform the development of these proposed modifications.

Based on the information received through the various sources described above, the Department proposes to modify the following areas or provisions of the Privacy Rule: consent, including other provisions for uses and disclosures of protected health information for treatment, payment, and health care operations; notice of privacy

practices for protected health information; minimum necessary uses and disclosures, and oral communications; business associates; uses and disclosures for marketing; parents as the personal representatives of unemancipated minors; uses and disclosures for research purposes; uses and disclosures of protected health information for which authorizations are required; and de-identification of protected health information. In addition to these key areas, the proposal includes changes to certain other provisions where necessary to clarify the Privacy Rule. The Department also includes in the proposed Rule a list of technical corrections intended as editorial or typographical corrections to the Privacy Rule.

The proposed modifications collectively are designed to ensure that protections for patient privacy are implemented in a manner that maximizes the effectiveness of such protections while not compromising either the availability or the quality of medical care. They reflect a continuing commitment on the part of the Department to strong privacy protections for medical records and the belief that privacy is most effectively protected by requirements that are not exceptionally difficult to implement. If there are any ways in which privacy protections are unduly compromised by these modifications, the Department welcomes comments and suggestions for alternative ways effectively to protect patient privacy without adversely affecting access to, or the quality of, health care.

Given that the compliance date of the Privacy Rule for most covered entities is April 14, 2003, and statutory requirements to ensure that affected parties have sufficient time to come into compliance require any revisions to become effective by October 13, 2002, the Department is soliciting public comment on these proposed modifications for only 30 days. As stated above, the modifications address public concerns already communicated to the Department through a wide variety of sources since publication of the Privacy Rule in December 2000. For these reasons, the Department believes that 30 days should be sufficient for the public to state its views fully to the Department on the proposed modifications to the Privacy Rule.

III. Description of Proposed Modifications

A. Uses and Disclosures for Treatment, Payment, and Health Care Operations

1. Consent

Treatment and payment for health care are core functions of the health care industry, and uses and disclosures of individually identifiable health information for such purposes are critical to the effective operation of the health care system. Health care providers and health plans must also use individually identifiable health information for certain health care operations, such as administrative, financial, and legal activities, to run their businesses, and to support the essential health care functions of treatment and payment. Equally important are health care operations designed to maintain and improve the quality of health care. In developing the Privacy Rule, the Department considered the privacy implications of uses and disclosures for treatment, payment, and health care operations in connection with the need for these activities to continue. In balancing the need for these activities and the privacy interests involved in using and disclosing protected health information for these purposes, the Department considered the fact that many individuals expect that their health information will be used and disclosed as necessary to treat them, bill for treatment, and, to some extent, operate the covered entity's health care business. Due to individual expectations with respect to the use or disclosure of information for such activities and so as not to interfere with an individual's access to quality health care or efficient payment for such health care, the Department's goal is to permit these activities to occur with little or no restriction.

Consistent with this view, the Privacy Rule generally provides covered entities with permission to use and disclose protected health information as necessary for treatment, payment, and health care operations. For certain health care providers that have a direct treatment relationship with individuals, such as many physicians, hospitals, and pharmacies, the Privacy Rule requires such providers to obtain an individual's written consent prior to using or disclosing protected health information for these purposes.

To implement the consent standard, the Privacy Rule requires a covered health care provider with a direct treatment relationship with the individual to obtain a single, one-time, general permission from the individual prior to using or disclosing protected health information about him or her for treatment, payment, and health care operations. An individual may revoke his or her consent at any time, except to the extent that the covered entity has taken action in reliance on the consent. The Privacy Rule contains exceptions to the consent requirements, under which a provider may use or disclose protected health information without prior consent when there is an emergency treatment situation, when a provider is required by law to treat the individual, or when there are substantial communication barriers. Additionally, because the Department realizes that a health care provider cannot treat a patient without being able to use and disclose his or her protected health information for treatment purposes, the Privacy Rule permits a covered health care provider to refuse to treat a patient who refuses to provide consent. Finally, the Privacy Rule permits other covered entities to voluntarily obtain consent, in accordance with these consent provisions.

The consent requirement for health care providers with direct treatment relationships was a significant change from the Department's initial proposal published in November 1999. At that time, the Department proposed to permit all covered entities to use and disclose protected health information to carry out treatment, payment, and health care operations without any requirement that the covered entities obtain an individual's consent for such uses and disclosures, subject to a few limited exceptions. Further, the Department had proposed to prohibit covered entities from obtaining an individual's consent for uses and disclosures of protected health information for these purposes, unless required by other applicable law. Instead, the Department relied on the principle of fair notice, coupled with regulatory limits on the use and disclosure of health information, to balance the individual's privacy interests against the need not to impede the delivery of quality health care. Providing individuals with fair notice about the information practices and responsibilities of their plans and providers, and their rights with respect to information about them, is a privacy principle as important as the principle of consent. Indeed, consents often provide individuals with little actual control over information. When an individual is required to sign a blanket consent at the point of treatment as a condition of treatment or payment, that

consent is often not voluntary. Instead, therefore, the Department proposed to require most covered entities to create and provide to individuals a notice describing all of the entity's information practices, including their practices with respect to uses and disclosures of protected health information to carry out treatment, payment, and health care operations.

The Department received a strong public response opposing this proposal. Health care providers and patients argued that consent provides individuals with a sense of control over how their information will be used and disclosed, is a current practice of many health care providers, and is expected by patients. Providers explained that they would face an ethical conflict from a prohibition on obtaining consent. The consent requirement for direct treatment providers was a direct response to these comments.

Public Comments

The Department received many comments in March 2001, as well as recommendations from the NCVHS based on public testimony, about the consent provisions in the Privacy Rule. There were some proponents of consent that urged the Department to retain, expand, or strengthen the consent provisions. There were also many opponents of consent that raised a number of issues and serious concerns that the consent requirements will impede access to, and the delivery of, quality health care. Most significantly, many covered entities described an array of circumstances when they need to use or disclose protected health information for treatment, payment, or health care operations purposes prior to the initial face-to-face contact with the patient, and therefore, prior to obtaining consent.

Consistent with the comments that the Department received after the initial notice of proposed rulemaking (NPRM), proponents of the consent requirement argued that consent is integral to providing individuals the opportunity to be active participants in their own health care and can bolster patient trust in providers. One of the most significant values that proponents placed on consent was that it defines an ''initial moment'' when patients can focus on information practices and raise questions about privacy concerns. Some proponents recommended that the consent requirement be extended to health plans because these entities may not have the same duty and legal obligation as health care providers to maintain confidentiality.

Others urged the Department to strengthen consent by eliminating the ability of providers to condition treatment on the receipt of consent. There were also some commenters that thought that consent should be required more frequently. They claimed that the consent provisions will be ineffective to provide individuals with control over how their information will be used or disclosed because it is general and only must be obtained one time. They argued that an individual may have differing degrees of concern about the privacy of health information, depending on the nature of the information raised in the particular encounter with the provider, and that an initial, one-time consent cannot account for such variation.

At the same time, most covered entities were concerned about significant practical problems that resulted from the consent requirements in the Privacy Rule. Commenters raised numerous examples of obstacles that the prior consent provisions will pose to timely access to health care. Health care providers commented that they often use health information about an individual for necessary treatment, payment, and health care operations activities prior to the first face-to-face contact with the individual. Under the Privacy Rule, these routine and often essential activities are not permitted unless the provider first obtains consent from the individual. Although the consent only needs to be obtained one time, there may be problems for new patients who have not yet provided consent, for existing patients who have not yet provided consent after the compliance date of the Privacy Rule, for patients who have revoked consent, and for patients who may have provided consent, but the provider cannot find such documentation.

These concerns were primarily raised by pharmacists and pharmacies, but the same issue exists in any referral or new patient situation. Pharmacists informed us that they typically use individually identifiable health information, received from a physician, to fill a prescription, search for potential drug interactions, and determine eligibility and obtain authorization for payment, before the individual arrives at the pharmacy to pick up the prescription. The consent requirement would delay such activity for any first-time customers and for many more customers immediately following the compliance date of the Privacy Rule. Tracking consents in large, multi-state pharmacy chains can result in delays as well. At best, an individual will experience significant delays in obtaining his or her prescription if a pharmacist cannot fill the prescription until the individual is present to sign a consent. Even greater delays may be experienced by individuals too ill to pick up their own prescriptions. Although the Privacy Rule permits a friend or neighbor to pick up the prescription, that person may not have the legal authority to sign a consent on the individual's behalf. Thus, a number of trips back and forth to the pharmacy may be needed to obtain the prior consent. This problem is greatly magnified in rural areas, where persons may travel much longer distances to see health care providers, including pharmacists.

Similarly, a hospital receives information about a patient from a referring physician and routinely uses this information to schedule and prepare for procedures before the individual presents at the hospital for such procedure. The Privacy Rule's requirement that a covered entity obtain an individual's consent prior to using or disclosing their information is an impediment to these activities and could require an individual to make an additional trip to the hospital simply to provide consent. The Department did not intend that the Privacy Rule interfere with such activities.

Commenters also raised concerns that providers who do not provide treatment in person may be unable to provide care because they are unable to obtain prior written consent to use protected health information at the first service delivery. This was a special concern with respect to providers who care for individuals over the telephone. For example, providers who cover for other providers during non-business hours or providers who had not yet had the opportunity to obtain a patient's consent were concerned that they would not be able to respond to telephone calls from individuals in need of treatment because they were not able to obtain consent over the telephone. Nurses who staff telephone centers that provide health care assessment and advice, but who never see patients, had similar concerns.

Other concerns related to treatment were expressed about the limitations of the exceptions to the consent requirement in the Privacy Rule. For example, emergency medical providers were unclear as to whether all activities in which they engage qualify for the emergency treatment exception to the consent requirement. As a result of this confusion, they were concerned that, if a situation was urgent, they would have to try to obtain consent to comply with the Privacy Rule even if that would be inconsistent with current practice of emergency medicine. These providers

also were concerned about the requirement that a provider must attempt to obtain consent as soon as reasonably practicable after an emergency. Emergency medical providers explained that they typically do not have ongoing relationships with individuals and that the requirement to attempt to obtain consent after the emergency would require significant efforts and administrative burden on their part, and would be viewed as harassment by individuals.

Providers who do not provide emergency care and who are not likely meet one of the consent exceptions were concerned that they may be put in the untenable position of having to decide whether to withhold treatment when an individual does not provide consent or proceed to use information to treat the individual in violation of the consent requirements.

Covered entities were also concerned that the difficultly in tracking consents may hamper treatment. The Privacy Rule permits an individual to revoke his or her consent. Large institutional providers claimed that, since tracking of patient consents and revocations would be very difficult and expensive, in practice, they would need to obtain consent for each patient encounter, rather than just one-time as allowed by the Privacy Rule. Covered entities were concerned that, if an individual revokes consent, they would have to eliminate all protected health information about that individual from their systems in order to ensure that it was not used inadvertently for routine health care operations purposes, which would hinder their quality improvement activities and other health care operations. Additionally, testimony before the NCVHS revealed a concern that the ability of a patient to revoke consent might prevent health care providers from accessing protected health information that is critical for the treatment of an individual in an emergency treatment situation where a new consent is not obtained.

The Department also heard many concerns about the transition provisions related to the use and disclosure of protected health information for treatment, payment, or health care operations. The Privacy Rule permits covered health care providers that are required to obtain consent for treatment, payment, or health care operations to continue, after the compliance date of the Privacy Rule, to use and disclose protected health information they created or received prior to the compliance date of the Privacy Rule for these purposes if they have obtained consent, authorization, or other express legal permission to use or disclose such information for any of these purposes, even if such permission does not meet the consent requirements under the Privacy Rule. Many providers informed the Department that they currently were not required to obtain consent for these purposes, that these transition provisions would result in significant operational problems, and the inability to access health records would have an adverse effect on quality activities.

Concerns also were raised regarding the exception to the consent requirement for cases where a provider is required by law to treat an individual. For example, providers that are required by law to treat were concerned about the mixed messages to patients and interference with the physician-patient relationship that would result when they are required to ask for consent to use or disclose protected health information for treatment, payment, or health care operations, but if the patient says ''no,'' they are permitted to use or disclose the information for such purposes anyway.

There also was confusion about the interaction of the consent provisions and the provisions regarding parents and minors. Testimony received by the NCVHS indicated uncertainty as to the validity of a consent signed by a parent for his or her minor child once the child reaches the age of majority. The NCVHS requested clarification regarding whether a child must sign a new consent upon reaching the age of majority.

The NCVHS hearings and recommendations focused on practical implementation issues, including the unintended consequences of the consent provisions, but did not address whether the Privacy Rule should or should not require consent. The NCVHS generally recommended that the Department consider circumstances in which protected health information could be used and disclosed without an individual's prior written consent and modify the Privacy Rule accordingly. The Committee specifically recommended that the Privacy Rule should be amended to include provisions for allowing covered entities to use and disclose protected health information prior to the initial face-to-face contact with an individual.

Proposed Modifications

The Department is concerned by the multitude of comments and examples demonstrating that the consent requirements result in unintended consequences that impede the provision of health care in many critical circumstances and that other such unintended consequences may exist which have yet to be brought to its attention. However, the Department understands that the opportunity to discuss privacy practices and concerns is an important component of privacy, and that the confidential relationship between a patient and a health care provider includes the patient's ability to be involved in discussions and decisions related to the use and disclosure of any protected health information about him or her.

Accordingly, the Department proposes an approach that protects privacy interests by affording patients the opportunity to engage in important discussions regarding the use and disclosure of their health information, while allowing activities that are essential to provide access to quality health care to occur unimpeded. Specifically, the Department proposes to make optional the obtaining of consent to use and disclose protected health information for treatment, payment, or health care operations on the part of all covered entities, including providers with direct treatment relationships. Under this proposal, health care providers with direct treatment relationships with individuals would no longer be required to obtain an individual's consent prior to using and disclosing information about him or her for treatment, payment, and health care operations. They, like other covered entities, would have regulatory permission for such uses and disclosures.

In order to preserve flexibility and the valuable aspects of the consent requirement, the Department proposes changes that would: (1) Permit all covered entities to obtain consent if they choose, (2) strengthen the notice requirements to preserve the opportunity for individuals to discuss privacy practices and concerns with providers, and (3) enhance the flexibility of the consent process for those covered entities that choose to obtain consent. See section III.B. of the preamble below for the related discussion of proposed modifications to the Privacy Rule's notice requirements.

Other individual rights would not be affected by this proposal. Although covered entities would not be required to obtain an individual's consent, any uses or disclosures of protected health information for treatment, payment, or health care operations would still need to be consistent with the covered entity's notice of privacy practices. Also, the removal of the consent requirement only applies to consent for treatment, payment, and health care operations; it does not alter the

requirement to obtain an authorization under § 164.508 for uses and disclosures of protected health information not otherwise permitted by the Privacy Rule. The functions of treatment, payment, and health care operations were all given carefully limited definitions in the Privacy Rule, and the Department intends to enforce strictly the requirement for obtaining an individual's authorization, in accordance with § 164.508, for uses and disclosure of protected health information for other purposes not otherwise permitted or required by the Privacy Rule. Furthermore, individuals would retain the right to request restrictions, in accordance with § 164.522(a).

Although consent for use and disclosure of protected health information for treatment, payment, and health care operations would no longer be mandated, the Department is proposing to allow covered entities to have a consent process if they wish to do so. The Department heard from some commenters that obtaining consent was an integral part of the ethical and other practice standards for many health care professionals. The Department, therefore, would not prohibit covered entities from obtaining consent.

Under this proposal, a consent could apply only to uses and disclosures that are otherwise permitted by the Privacy Rule. A consent obtained through this voluntary process would not be sufficient to permit a use or disclosure which, under the Privacy Rule, requires an authorization or is otherwise expressly conditioned. For example, a consent could not be obtained in lieu of an authorization or a waiver of authorization by an IRB or Privacy Board to disclose protected health information for research purposes.

The Department proposes to allow covered entities that choose to have a consent process complete discretion in designing this process. The comments have informed the Department that one consent process and one set of principles will likely be unworkable. As a result, these proposed standards would leave complete flexibility to each covered entity. Covered entities that chose to obtain consent could rely on industry practices to design a voluntary consent process that works best for their practice area and consumers.

To effectuate these changes to the consent standard, the Department proposes to replace the consent provisions in § 164.506 with a new provision at § 164.506(a) that would provide regulatory permission for covered entities to use or disclose protected health information for treatment, payment, and health care operations, and a new provision at § 164.506(b) that would allow covered entities to obtain consent if they choose to, and make clear that such consent may not permit a use or disclosure of protected health information not otherwise permitted or required by the Privacy Rule. Additionally, the Department proposes a number of conforming modifications throughout the Privacy Rule to accommodate the proposed approach. The most substantive corresponding changes are proposed at §§ 164.502 and 164.532. Section 164.502(a)(1) provides a list of the permissible uses and disclosures of protected health information, and refers to the corresponding section of the Privacy Rule for the detailed requirements. The Department collapses the provisions at §§ 164.502(a)(1)(ii) and (iii) that address uses and disclosures of protected health information for treatment, payment, and health care operations and modifies the language to eliminate the consent requirement for these purposes.

Section 164.532 consists of the transition provisions. In § 164.532, the Department deletes references to § 164.506 and to consent, authorization, or other express legal permission obtained for uses and disclosures of protected health information for treatment, payment, and health care operations prior to the compliance date of the Privacy Rule. The proposal to permit a covered entity to use or disclose protected health information for these purposes without consent or authorization would apply to any protected health information held by a covered entity whether created or received before or after the compliance date. Therefore, transition provisions would not be necessary.

The Department also proposes conforming changes to the definition of ''more stringent'' in § 160.202, § 164.500(b)(1)(v), §§ 164.508(a)(2)(i) and (b)(3)(i), the introductory text of §§ 164.510 and 164.512, the title of § 164.512, and § 164.520(b)(1)(ii)(B) to reflect that consent is no longer required.

2. Disclosures for Treatment, Payment, or Health Care Operations of Another Entity

The Privacy Rule permits a covered entity to use and disclose protected health information for treatment, payment, or health care operations (subject to a consent in some cases). Uses and disclosures for treatment are broad because the definition of treatment incorporates the interaction among more than one entity; specifically, coordination and management of health care among health care providers or by a health care provider with a third party, consultations between health care providers, and referrals of a patient for health care from one health care provider to another. As a result, covered entities are permitted to disclose protected health information for treatment regardless of to whom the disclosure is made, as well as to disclose protected health information for the treatment activities of another health care provider.

However, for payment and health care operations, the Privacy Rule generally limits a covered entity's uses and disclosures of protected health information to those that are necessary for its own payment and health care operations activities. This limitation is explicitly stated in the preamble discussions in the Privacy Rule of the definitions of ''payment'' and ''health care operations.'' The Privacy Rule also provides that a covered entity must obtain authorization to disclose protected health information for the payment or health care operations of another entity. The Department intended these requirements to be consistent with individuals' privacy expectations. See §§ 164.506(a)(5) and 164.508(e).

Public Comments

A number of commenters raised specific concerns with the restriction that a covered entity is permitted to use and disclose protected health information only for its own payment and health care operations activities. These commenters presented a number of examples where such a restriction would impede the ability of certain covered entities to obtain reimbursement for health care, to conduct certain quality assurance or improvement activities, such as accreditation, or to monitor fraud and abuse.

With regard to payment, the Department received specific concerns about the difficultly that the Privacy Rule will place on certain providers trying to obtain information needed for reimbursement for health care. Specifically, ambulance service providers explained that they normally receive the information they need to seek payment for treatment from the hospital emergency departments to which they transport their patients, since it is usually not possible at the time the service is rendered for the ambulance service provider to obtain such information directly from the individual. Nor is it practicable or

feasible in all cases for the hospital to obtain the individual's authorization to provide payment information to the ambulance service provider after the fact. This disclosure of protected health information from the hospital to the ambulance service provider is not permitted under the Privacy Rule without an authorization from the patient because it is a disclosure by the hospital for the payment activities of the ambulance service provider.

In addition, commenters stated that physicians and other covered entities outsource their billing, claims, and reimbursement functions to accounts receivable management companies. These collectors often attempt to recover payments from a patient for care rendered by multiple health care providers. Commenters were concerned that the Privacy Rule will prevent these collectors, as business associates of multiple providers, from using a patient's demographic information received from one provider in order to facilitate collection for another provider's payment purposes.

With regard to health care operations, the Department also received comments about the difficultly that the Privacy Rule will place on health plans trying to obtain information needed for quality assessment activities. Health plans informed the Department that they need to obtain individually identifiable health information from health care providers for the plans' own quality-related activities, accreditation, and performance measures, e.g., Health Plan Employer Data and Information Set (HEDIS). Commenters explained that the information provided to plans for payment purposes (e.g., claims or encounter information) may not be sufficient for quality assessment or accreditation purposes. Plans may receive even less information from their capitated providers.

The NCVHS also received specific public testimony with regard to this issue as part of public hearings held in August 2001. The NCVHS subsequently recommended to the Department that the Privacy Rule be amended to allow for uses and disclosures for quality-related activities among covered entities without individual written authorization.

Proposed Modifications

Based on concerns raised by comments, the Department proposes to modify § 164.506 to permit a covered entity to disclose protected health information for the payment activities of another covered entity or health care provider, and for certain health care operations of other covered entities. This proposal would broaden the uses and disclosures that are permitted as part of treatment, payment, and health care operations so as not to interfere inappropriately with access to quality and effective health care, while limiting this expansion in order to continue to protect the privacy expectations of individuals. It would be a limited expansion of the information that is allowed to flow between entities, without an authorization, as part of treatment, payment, and certain health care operations.

The Department proposes the following. First, the Department explicitly includes in § 164.506(c)(1) language stating that a covered entity may use or disclose protected health information for its own treatment, payment, or health care operations without prior consent or authorization.

Second, in § 164.506(c)(2), the Department includes language to clarify its intent that a covered entity may share protected health information for the treatment activities of another health care provider. For example, a primary care provider, who is a covered entity under the Privacy Rule, may send a copy of an individual's medical record to a specialist who needs the information to treat the same individual. No authorization would be required.

Third, with respect to payment, the Department proposes, in § 164.506(c)(3), to explicitly permit a covered entity to disclose protected health information to another covered entity or health care provider for the payment activities of that entity. The Department recognizes that not all health care providers who need protected health information to obtain payment are covered entities, and therefore, proposes to allow disclosures of protected health information to both covered and non-covered health care providers. The Department is unaware of any similar barrier with respect to plans that are not covered under the Privacy Rule to obtain the protected health information they need for payment purposes, but solicits comment on whether such barriers exist. Therefore, the Department proposes to limit disclosures under this provision to those health plans that are covered by the Privacy Rule.

Fourth, in § 164.506(c)(4), the Department proposes to permit a covered entity to disclose protected health information about an individual to another covered entity for certain health care operations purposes of the covered entity that receives the information. The proposal would permit such disclosures only for the activities described in paragraphs (1) and (2) of the definition of ''health care operations,'' as well as for health care fraud and abuse detection and compliance programs (as provided for in paragraph (4) of the definition of ''health care operations''). The activities that fall into paragraphs (1) and (2) of the definition of ''health care operations'' include quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management, conducting training programs, and accreditation, certification, licensing, or credentialing activities. This provision is intended to allow information to flow from one covered entity to another for activities important to providing quality and effective health care.

The proposed expansion for permissible disclosures for health care operations without authorization is more limited than the permissible disclosures for treatment and payment in two ways. First, in contrast to treatment and payment, the proposal limits the types of health care operations that are covered by this expansion. The Department proposes this limitation because it recognizes that ''health care operations'' is a broad term and that individuals are less aware of the business-related activities that involve the use and disclosure of protected health information. In addition, many commenters and the NCVHS focused their comments on covered entities' needs to share protected health information for quality-related health care operations activities.

Second, in contrast to the treatment and payment provisions in this section, the proposal for disclosures of protected health information for health care operations of another entity limits disclosures to other covered entities. By limiting disclosure for such purposes to entities that are required to comply with the Privacy Rule, the protected health information would continue to be protected. The Department believes that this would create the appropriate balance between meeting an individual's privacy expectations and meeting a covered entity's need for information for quality-related health care operations.

These proposed modifications to allow disclosures for health care operations of another entity are permitted only to the extent that each entity has, or has had, a relationship with the individual who is the subject of the information being requested. Where the relationship between the individual and the covered entity has ended, a disclosure of protected health information about the individual only would be allowed if related to the past

relationship. The Department believes that this limitation is necessary in order to protect the privacy expectations of the individual. An individual should expect that two providers that are providing treatment to the individual, and the health plan that pays for the individual's health care, would have protected health information about the individual for health care operations purposes. However, an individual would not expect a health plan with which the individual has no relationship to be able to obtain identifiable information from his or her health care provider. Therefore, this proposed limitation would minimize the effect on privacy interests, while not interfering with covered entities' ability to continue to provide access to quality and effective health care.

These provisions do not eliminate a covered entity's responsibility to apply the Privacy Rule's minimum necessary provisions to both the disclosure of and request for information for payment and health care operations purposes. In addition, the Department continues to strongly encourage the use of de-identified information wherever feasible.

The Department, however, is aware that the above proposal could pose barriers to disclosures for quality-related health care operations to plans and health care providers that are not covered entities, or to entities that do not have a relationship with the individual. For example, the proposal could be a problem for hospitals that share aggregated but identifiable information with other hospitals for health care operations purposes, when the recipient hospital does not have a relationship with the individual who is the subject of the information being disclosed. While the Department believes the proposed modification strikes the right balance between privacy expectations and covered entities' need for information for such purposes, the Department is considering permitting the disclosure of information that is not facially identifiable for quality-related purposes, subject to a data use or similar agreement. This would permit uses and disclosures for such purposes of a limited data set that does not include facially identifiable information, but in which certain identifiers remain. The Department is requesting comment on whether this approach would strike a proper balance. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

Related to the above modifications, and in response to comments evidencing confusion on this matter, the Department proposes in § 164.506(c)(5) to make it clear that covered entities participating in an organized health care arrangement (OHCA) may share protected health information for the health care operations of the OHCA. The Privacy Rule allows legally separate covered entities that are integrated clinically or operationally to be considered an OHCA for purposes of the Privacy Rule if protected health information must be shared among the covered entities for the joint management and operations of the arrangement. See the definition of ''organized health care arrangement'' in § 164.501. Additionally, the Privacy Rule, in the definition of ''health care operations,'' permits the sharing of protected health information in an OHCA for such activities. The Department proposes to remove the language regarding OHCAs from the definition of ''health care operations'' as unnecessary because such language now would appear in § 164.506(c)(5).

In addition, the Department proposes a conforming change to delete the word ''covered'' in paragraph (1)(i) of the definition of ''payment.'' This change would be necessary because the proposal would permit disclosures to non-covered providers for their payment activities.

B. Notice of Privacy Practices for Protected Health Information

The Privacy Rule requires most covered entities to provide individuals with adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and of the individual's rights, and the covered entity's responsibilities, with respect to protected health information. See § 164.520. Content requirements for the notice are specified in the Privacy Rule. There are also specific requirements, which vary based on the type of covered entity, for providing such notice to individuals.

For example, a covered health care provider that has a direct treatment relationship with an individual must provide the notice by the date of the first service delivery and, if such provider maintains a physical service delivery site, must post the notice in a clear and prominent location. In addition, whenever the notice is revised, the provider must make the notice available upon request. If the covered provider maintains a website, the notice must also be available electronically on the web site. If the first service delivery to an individual is electronic, the covered provider must furnish electronic notice automatically and contemporaneously in response to the individual's first request for service.

Proposed Modifications

In order to preserve some of the most important benefits of the consent requirement, the Department proposes to modify the notice requirements at § 164.520(c)(2) to require that a covered health care provider with a direct treatment relationship make a good faith effort to obtain an individual's written acknowledgment of receipt of the provider's notice of privacy practices. Other covered entities, such as health plans, would not be required to obtain this acknowledgment from individuals, but could do so if they chose.

The Department believes that promoting individuals' understanding of privacy practices is an essential component of providing notice to individuals. In addition, the Department believes it is just good business practice to provide individuals with fair notice about how their information will be used, disclosed, and protected. This proposal would strengthen the notice process by incorporating into the notice process the ''initial moment'' between a covered health care provider and an individual, where individuals may focus on information practices and privacy rights and discuss any concerns related to the privacy of their protected health information. This express acknowledgment would also provide the opportunity for an individual to make a request for additional restrictions on the use or disclosure of his or her protected health information or for additional confidential treatment of communications, as permitted under § 164.522.

The Department intends the proposed notice acknowledgment requirement to be simple and not impose a significant burden on either the covered health care provider or the individual. First, the requirement for good faith efforts to obtain a written acknowledgment only applies to covered providers with direct treatment relationships. This is the same group of covered entities that would have been required to obtain consent under the Privacy Rule. The Department believes that these are the covered entities that have the most direct relationships with individuals, and therefore, the entities for which the requirement will provide the greatest privacy benefit to individuals with the least burden to covered entities.

Second, the Department designed the timing of the proposed good faith acknowledgment requirement to limit the burden on covered entities by generally making it consistent with the

timing for notice distribution. Therefore, with one exception, a covered health care provider would be required to make good faith efforts to obtain a written acknowledgment of the notice at the time of first service delivery—the same time that the notice must be provided. The Department understands, however, that providing notice and obtaining an acknowledgment is not practicable during emergency treatment situations. In these situations, the Department proposes in § 164.520(c)(2) to delay the requirement for provision of notice until reasonably practicable after the emergency treatment situation, and exempt health care providers from having to make a good faith effort to obtain the acknowledgment in emergency treatment situations.

Third, the proposal does not prescribe in detail the form the acknowledgment must take. Rather, the Department proposes to require only that the acknowledgment be in writing, and intends to allow each covered health care provider to choose the form and other details of the acknowledgment that are best suited to the entity's practices and that will not pose an impediment to the delivery of timely, quality health care. While the Department believes that requiring the individual's signature is preferable because an individual is likely to pay more attention or more carefully read a document that he or she signs, the proposal does not require an individual's signature on the notice. An acknowledgment under this proposed modification also may be obtained, for example, by having the individual sign a separate list or simply initial a cover sheet of the notice to be retained by the covered entity. The proposal would not limit the manner in which a covered entity obtains the individual's acknowledgment of receipt of the notice.

Most importantly, the proposed modification would require only the good faith effort of the provider to obtain the individual's acknowledgment. The Department understands that an individual may refuse to sign or otherwise fail to provide his or her acknowledgment. Unlike the Privacy Rule's consent requirement, an individual's failure or refusal to acknowledge the notice, despite a covered entity's good faith efforts to obtain such signature, would not interfere with the provider's ability to deliver timely and effective treatment. Failure by a covered entity to obtain an individual's acknowledgment, assuming it otherwise documented its good faith effort, would not be considered a violation of the Privacy Rule. Compliance with this requirement would be achieved in a particular case if the provider with a direct treatment relationship either: (1) Obtained a written acknowledgment, or (2) made a good faith effort to obtain such acknowledgment and documented such efforts and the reason for failure. Such reason for failure simply may be, for example, that the individual refused to sign after being requested to do so. In addition to the individual's failure or refusal to acknowledge receipt of the notice, this proposed provision is intended to allow covered health care providers flexibility to deal with a variety of circumstances in which obtaining an acknowledgment is problematic.

The requirement for a good faith effort to obtain the individual's acknowledgment would apply, except in emergency treatment situations, to the provision of notice on the first delivery of service, regardless of whether such service is provided in person or electronically. When electronic notice is provided as part of the first service delivery, the system should be capable of capturing the individual's acknowledgment of receipt electronically. The Department does not anticipate that a notification of receipt would be difficult or costly to design.

Documentation requirements under this proposal would be required to comply with the documentation requirements in § 164.530(j). In addition, nothing in the proposed requirements described above would relieve any covered entity from its duty to provide the notice in plain language so that the average reader can understand the notice. As stated in the preamble to the Privacy Rule, the Department encourages covered entities to consider alternative means of communicating with certain populations, such as with individuals who cannot read or who have limited English proficiency.

C. Minimum Necessary and Oral Communications

The Privacy Rule at § 164.502(b) generally requires covered entities to make reasonable efforts to limit the use or disclosure of, and requests for, protected health information to the minimum necessary to accomplish the intended purpose. Protected health information includes individually identifiable health information in any form, including information transmitted orally, or in written or electronic form. See the definition of ''protected health information'' at § 164.501. The minimum necessary standard is intended to make covered entities evaluate their practices and enhance protections as needed to limit unnecessary or inappropriate access to, and disclosures of, protected health information.

The Privacy Rule sets forth requirements at § 164.514(d) for implementing the minimum necessary standard with regard to a covered entity's uses, disclosures, and requests. Essentially, a covered entity is required to develop and implement policies and procedures appropriate to the entity's business practices and workforce that reasonably minimize the amount of protected health information used, disclosed, and requested; and, for uses of protected health information, that also limit who has access to such information. Specifically, for uses of protected health information, the policies and procedures must identify the persons or classes of persons within the covered entity who need access to the information to carry out their job duties, the categories or types of protected health information needed, and conditions appropriate to such access. For routine or recurring requests and disclosures, the policies and procedures may be standard protocols. Non-routine requests for and disclosures of protected health information must be reviewed individually.

With regard to disclosures, the Privacy Rule permits a covered entity to rely on the judgment of certain parties requesting the disclosure as to the minimum amount of information that is needed. For example, a covered entity is permitted to reasonably rely on representation from a public health official that the protected health information requested is the minimum necessary for a public health purpose. Similarly, a covered entity is permitted to reasonably rely on the judgment of another covered entity requesting a disclosure that the information requested is the minimum amount of information reasonably necessary to fulfill the purpose for which the request has been made. *See* § 164.514(d)(3)(iii).

The Privacy Rule contains some exceptions to the minimum necessary standard. The minimum necessary requirements do not apply to uses or disclosures that are required by law, disclosures made to the individual or pursuant to an authorization initiated by the individual, disclosures to or requests by a health care provider for treatment purposes, uses or disclosures that are required for compliance with the regulations implementing the other administrative simplification provisions of HIPAA, or disclosures to the Secretary of HHS for enforcement purposes. See § 164.502(b)(2).

The Department received much, varied commentary both on the minimum necessary provisions, as well as on the Privacy Rule's protections of oral communications. The following discussion addresses the concerns identified by commenters that were common to both the Privacy Rule's standards for minimum necessary as well as protecting oral communications, and describes the Department's proposal for modifying the Privacy Rule in response to these concerns. In addition, the Department proposes to modify certain other paragraphs within § 164.514(d) to clarify the Department's intent with respect to these provisions. The Department also discusses some of the other concerns that have been received, which the Department attempted to address in its July 6 guidance on the Privacy Rule. Lastly, the Department describes the recommendations provided to the Department by the NCVHS as a result of public testimony received on implementation of the minimum necessary standard, as well as the Department's response to these recommendations.

Public Comments—Incidental Uses and Disclosures

During the March 2001, comment period on the Privacy Rule, the Department received a number of comments raising concerns and questions as to whether the Privacy Rule's restrictions on uses and disclosures will prohibit covered entities from engaging in certain common and essential health care communications and practices in use today. Commenters were concerned that the Department is imposing through the Privacy Rule absolute, strict standards that would not allow for the incidental or unintentional disclosure that could occur as a by-product of engaging in these health care communications and practices. It was argued that the Privacy Rule will, in effect, prohibit such practices and, therefore, impede many activities and communications essential to effective and timely treatment of patients.

These concerns were raised both in the context of applying the Privacy Rule's protections to oral communications, as well as in implementing the minimum necessary standard. For example, with regard to oral communications, commenters expressed concern over whether health care providers may continue to engage in confidential conversations with other providers or with patients, if there were a possibility that they could be overheard. As examples, commenters specifically questioned whether health care staff can continue to: coordinate services at hospital nursing stations orally; discuss a patient's condition over the phone with the patient or another provider, if other people are nearby; discuss lab test results with a patient or other provider in a joint treatment area; call out a patient's name in a waiting room; or discuss a patient's condition during training rounds in an academic or training institution.

Many covered entities also expressed confusion and concern that the Privacy Rule will stifle or unnecessarily burden many of their current health care practices. For example, commenters questioned whether they will be prohibited from using sign-in sheets in waiting rooms or maintaining patient charts at bedside, or whether they will need to isolate X-ray lightboards or destroy empty prescription vials. These concerns seemed to stem from a perception that covered entities will be required to prevent any incidental disclosure such as those that may occur when a visiting family member or other person not authorized to access protected health information happens to walk by medical equipment or other material containing individually identifiable health information, or when individuals in a waiting room sign their name on a log sheet and glimpse the names of other patients.

Proposed Modifications—Incidental Uses and Disclosures

The Department, in its July 6 guidance, clarified that the Privacy Rule is not intended to impede customary and necessary health care communications or practices, nor to require that all risk of incidental use or disclosure be eliminated to satisfy its standards. So long as reasonable safeguards are employed, the burden of impeding such communications are not outweighed by any benefits that may accrue to individuals' privacy interests. The guidance assured that the Privacy Rule would be modified to clarify that such communications and practices may continue, if reasonable safeguards are taken to minimize the chance of incidental disclosure to others.

Accordingly, the Department proposes to modify the Privacy Rule to add a new provision at § 164.502(a)(1)(iii) which explicitly permits certain incidental uses and disclosures that occur as a result of an otherwise permitted use or disclosure under the Privacy Rule. An incidental use or disclosure would be a secondary use or disclosure that cannot reasonably be prevented, is limited in nature, and that occurs as a by-product of an otherwise permitted use or disclosure under the Privacy Rule. The Department proposes that an incidental use or disclosure be permissible only to the extent that the covered entity has applied reasonable safeguards as required by § 164.530(c), and implemented the minimum necessary standard, where applicable, as required by §§ 164.502(b) and 164.514(d).

Under this proposal, an incidental use or disclosure that occurs as a result of a failure to apply reasonable safeguards or the minimum necessary standard, as appropriate, is not a permissible use or disclosure and is, therefore, a violation of the Privacy Rule. For example, a covered entity that asks for a patient's health history on the waiting room sign-in sheet is not abiding by the minimum necessary requirements and, therefore, any incidental disclosure of such information that results from this practice would be an unlawful disclosure under the Privacy Rule.

Further, this proposed modification is not intended to excuse erroneous uses or disclosures or those that result from mistake or neglect. The Department would not consider such uses and disclosures to be incidental as they do not occur as a by-product of an otherwise permissible use or disclosure. For example, an impermissible disclosure would occur when a covered entity mistakenly sends protected health information via electronic mail to the wrong recipient or when protected health information is erroneously made accessible to others through the entity's web site.

Proposed Modifications to the Minimum Necessary Standard

Section 164.502(b)(2) sets forth the exceptions to the minimum necessary standard in the Privacy Rule. The Department proposes to separate § 164.502(b)(2)(ii) into two subparagraphs (§ 164.502(b)(2)(ii) and (iii)) to eliminate confusion regarding the exception to the minimum necessary standard for uses or disclosures made pursuant to an authorization under § 164.508 and those for disclosures made to the individual. Additionally, to conform to the proposal to eliminate the special authorizations required by the Privacy Rule at § 164.508(d), (e), and (f) (see section III.H for the relevant preamble discussion regarding authorization), the Department proposes to expand the exception for authorizations to apply generally to any authorization executed pursuant to § 164.508. Therefore, the proposal would exempt from the minimum necessary standard any uses or disclosures for which the covered entity

has received an authorization that meets the requirements of § 164.508.

The Privacy Rule at § 164.514(d) lists the standard and the specific requirements for implementing the minimum necessary standard. The Department proposes to modify § 164.514(d)(1) to delete the term ''reasonably ensure'' in response to concerns that the term connotes an absolute, strict standard and, therefore, is inconsistent with how the Department has described the minimum necessary requirements as being reasonable and flexible to the unique circumstances of the covered entity. In addition, the Department generally revises the language to be more consistent with the description of standards elsewhere in the Privacy Rule.

The Privacy Rule at § 164.514(d)(4) consists of the implementation specifications for applying the minimum necessary standard to a request for protected health information. The Department intended these provisions to be consistent with the requirements set forth in § 164.514(d)(3) for applying the minimum necessary standard to disclosures of protected health information, so that covered entities would be able to address requests and disclosures in a similar manner. However, with respect to requests not made on a routine and recurring basis, the Department omitted from § 164.514(d)(4) the requirement that a covered entity may implement this standard by developing criteria designed to limit its request for protected health information to the minimum necessary to accomplish the intended purpose. The Department proposes to add such a provision to make the implementation specifications for applying the minimum necessary standard to requests for protected health information by a covered entity more consistent with the implementation specifications for disclosures.

Other Comments on the Minimum Necessary Standard

In addition to the comments described above regarding incidental uses or disclosures, the Department received many other varied comments expressing both support of, and concerns about, the minimum necessary standard. The Department, in its July 6, 2001, guidance, attempted to address many of the commenters' concerns by clarifying the Department's intent with respect to the minimum necessary provisions. For example, many commenters expressed concerns about the costs and burden to covered entities in implementing the standard. A number of these commenters questioned whether they will be required to redesign office space or implement expensive upgrades to computer systems.

The Department's guidance emphasized that the minimum necessary standard is a reasonableness standard, intended to be flexible to account for the characteristics of the entity's business and workforce. The standard is not intended to override the professional judgment of the covered entity. The Department clarified that facility redesigns and expensive computer upgrades are not specifically required by the minimum necessary standard. Covered entities may, however, need to make certain adjustments to their facilities, as reasonable, to minimize access or provide additional security. For example, covered entities may decide to isolate and/or lock file cabinets or records rooms, or provide additional security, such as passwords, on computers that maintain protected health information.

A number of commenters, especially health care providers, also expressed concern that the minimum necessary restrictions on uses within the entity will jeopardize patient care and exacerbate medical errors by impeding access to information necessary for treatment purposes. These commenters urged the Department to expand the treatment exception to cover uses of protected health information within the entity. Other commenters urged the Department to exempt all uses and disclosures for treatment, payment, and health care operations purposes from the minimum necessary standard.

The Privacy Rule is not intended to impede access by health care professionals to information necessary for treatment purposes. As the Department explained in its guidance, a covered entity is permitted to develop policies and procedures that allow for the appropriate individuals within the entity to have access to protected health information, including entire medical records, as appropriate, so that those workforce members are able to provide timely and effective treatment.

With regard to payment and health care operations, the Department remains concerned, as stated in the preamble to the Privacy Rule, that, without the minimum necessary standard, covered entities may be tempted to disclose an entire medical record when only a few items of information are necessary, to avoid the administrative step of extracting or redacting information. The Department also believes that this standard will cause covered entities to assess their privacy practices, give the privacy interests of their patients and enrollees greater attention, and make improvements that might otherwise not be made. For these reasons, the Department continues to believe that the privacy benefits of retaining the minimum necessary standard for these purposes outweigh the burdens involved.

In addition, the NCVHS Subcommittee on Privacy and Confidentiality solicited public testimony on implementation of the minimum necessary standard of the Privacy Rule at its August 2001 public hearings. The testimony reflected a wide range of views, from those who commented that the Privacy Rule provides sufficient protections on individually identifiable health information without the minimum necessary standard, to those who expressed strong support for the standard as an integral part of the Privacy Rule. A number of panelists welcomed the flexibility of the standard, while others expressed concern that the vagueness of the standard might restrict the necessary flow of information, impede care, and lead to an increase in defensive information practices that would lead to the withholding of important information for fear of liability. Testimony also reflected differing views on the cost and administrative burden of implementing the standard. Some expressed much concern regarding the increased cost and burden, while others argued that the cost will be barely discernable.

The NCVHS developed recommendations on the minimum necessary standard based on the testimony and written comments provided at the hearings. In its recommendations, the NCVHS strongly reaffirmed the importance of the minimum necessary principle, but also generally recommended that HHS provide additional clarification and guidance to industry regarding the minimum necessary requirements to assist with effective implementation of these provisions, while allowing for the necessary flow of information and minimizing defensive information practices. While the NCVHS pointed out that many panelists at the hearing found the Department's July 6 guidance helpful in addressing questions about the minimum necessary standard, the Committee heard that many questions still remain within the industry. Therefore, the NCVHS specifically requested further guidance by the Department on the reasonable reliance provisions, and the requirement that covered entities develop policies and procedures for addressing routine uses

of information. In addition, the NCVHS recommended that the Department provide education to address the increasing concerns about liability and defensive information practices that may lessen the flow of information and impede care. The NCVHS generally recommended that the Department issue advisory opinions, publish best practices, and make available model policies, procedures, and forms to assist in alleviating the cost and administrative burden that will be incurred when developing policies and procedures as required by the minimum necessary provisions.

The Department agrees with the NCVHS about the need for further guidance on the minimum necessary standard and intends to issue further guidance to clarify issues causing confusion and concern in the industry, as well as provide additional technical assistance materials to help covered entities implement the provisions.

D. Business Associates

The Privacy Rule at § 164.502(e) permits a covered entity to disclose protected health information to a business associate who performs a function or activity on behalf of, or provides a service to the covered entity that involves the creation, use, or disclosure of, protected health information, provided that the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information. The Department recognizes that most covered entities do not perform or carry out all of their health care activities and functions by themselves, but rather acquire the services or assistance of a variety of other persons or entities. Given this framework, the Department intended these provisions to allow such business relationships to continue while ensuring that identifiable health information created or shared in the course of the relationships was protected.

The Privacy Rule requires that the satisfactory assurances obtained from the business associate be in the form of a written contract (or other written arrangement as between governmental entities) between the covered entity and the business associate that contains the elements specified at § 164.504(e). For example, the agreement must identify the uses and disclosures of protected health information the business associate is permitted or required to make, as well as require the business associate to put in place appropriate safeguards to protect against a use or disclosure not permitted by the contract or agreement.

The Privacy Rule also provides that, where a covered entity knows of a material breach or violation by the business associate of the contract or agreement, the covered entity is required to take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, to terminate the contract or arrangement. If termination of the contract or arrangement is not feasible, a covered entity then is required to report the problem to the Secretary of HHS. A covered entity that violates the satisfactory assurances it provided as a business associate of another covered entity will be in noncompliance with the Privacy Rule's business associate provisions.

The Privacy Rule's definition of ''business associate'' at § 160.103 includes some of the functions or activities, and all of the types of services, that make a person or entity who engages in them a business associate, if such activity or service involves protected health information. For example, a third party administrator (TPA) is a business associate of a health plan to the extent the TPA assists the health plan with claims processing or another covered function. Similarly, accounting services performed by an outside consultant give rise to a business associate relationship when provision of the service entails access to the protected health information held by a covered entity.

The Privacy Rule excepts from the business associate standard certain uses or disclosures of protected health information. That is, in certain situations, a covered entity is not required to have a contract or other written agreement in place before disclosing protected health information to a business associate or allowing protected health information to be created by the business associate on its behalf. Specifically, the standard does not apply to: disclosures by a covered entity to a health care provider for treatment purposes; disclosures to the plan sponsor by a group health plan, or a health insurance issuer or HMO with respect to a group health plan, to the extent that the requirements of § 164.504(f) apply and are met; or to the collection and sharing of protected health information by a health plan that is a public benefits program and an agency other than the agency administering the health plan, where the other agency collects protected health information for, or determines, eligibility or enrollment with respect to the government program, and where such activity is authorized by law. See § 164.502(e)(1)(ii).

Public Comments

The Department has received many comments on the business associate provisions of the Privacy Rule. The majority of commenters expressed some concern over the anticipated administrative burden and cost to implement the business associate provisions. Some commenters stated that covered entities might have existing contracts that are not set to terminate or expire until after the compliance date of the Privacy Rule. Many of these commenters expressed specific concern that the two-year compliance period does not provide enough time to reopen and renegotiate what could be hundreds or more contracts for large covered entities. A number of these commenters urged the Department to grandfather in existing contracts until such contracts come up for renewal instead of requiring that all contracts be in compliance with the business associate provisions by the compliance date of the Privacy Rule. In response to these comments, the Department intends to relieve some of the burden on covered entities in complying with the business associate provisions, both by proposing to grandfather certain existing contracts for a specified period of time, as well as publishing model contract language. These proposed changes are discussed below in this section under ''Proposed Modifications.''

In addition, commenters continued to express concern over a perceived liability imposed by the Privacy Rule that would essentially require that the covered entity monitor, and be responsible for, the actions of its business associates with respect to the privacy and safeguarding of protected health information. However, the Privacy Rule only requires that, where a covered entity knows of a pattern of activity or practice that constitutes a material breach or violation of the business associate's obligation under the contract, the covered entity take steps to cure the breach or end the violation. Accordingly, the Department, in its July 6 guidance, clarified that active monitoring of the actions of business associates is not required of covered entities, and more importantly, that covered entities are not responsible or liable for the actions of their business associates.

A number of commenters urged the Department to exempt covered entities from having to enter into contracts with business associates who are also covered entities under the Privacy Rule. The Department continues to believe, as stated in the preamble to the Privacy Rule, that a covered entity that is a

business associate should be restricted from using or disclosing the protected health information it creates or receives through its business associate function for any purposes other than those explicitly provided for in its contract. In addition, the contract serves to clarify the uses and disclosures made as, and the protected health information held by, the covered entity, versus those uses and disclosures made as, and the protected health information held by, the same entity as the business associate.

Many commenters continued to express concerns that requiring business associate contracts between health care providers in treatment situations would burden and impede quality care. The Department clarifies that the Privacy Rule does not require a contract for a covered entity to disclose protected health information to a health care provider for treatment purposes. In fact, such disclosures are explicitly excepted from the business associate requirements. *See* § 164.502(e)(1). For example, a hospital is not required to have business associate contracts with health care providers who have staff privileges at the institution in order for these entities to share protected health information for treatment purposes. Nor is a physician required to have a business associate contract with a laboratory as a condition of disclosing protected health information for the treatment of an individual.

Some commenters requested clarification as to whether business associate contracts were required between a health plan and the health care providers participating in the plan's network. Participation in a plan network in and of itself does not give rise to a business associate relationship to the extent that neither entity is performing functions or activities, or providing services to, the other entity. For example, each covered entity is acting on its own behalf when a provider submits a claim to a health plan, and when the health plan assesses and pays the claim. Discount payment arrangements do not require business associate relationships. However, this does not preclude a covered entity from establishing a business associate relationship with the health plan or another entity in the network for some other purpose. If the health plan and one or more of the providers participating in its network do perform covered functions on behalf of each other, a business associate agreement is required. For example, if one health care provider handles the billing activities of another health care provider in the same network, a business associate contract would be required before protected health information could be disclosed for this activity.

Proposed Modifications

The Department proposes new transition provisions at § 164.532(d) and (e) to allow covered entities, other than small health plans, to continue to operate under certain existing contracts with business associates for up to one year beyond the April 14, 2003, compliance date of the Privacy Rule. This modification is proposed in response to commenter concerns regarding the insufficient time provided by the two-year period between the effective date and compliance date of the Privacy Rule for covered entities, especially large entities, to reopen and renegotiate all existing vendor and service contracts in order to bring such contracts into compliance with the Privacy Rule's requirements.

The additional transition period would be available to a covered entity, other than a small health plan, if, prior to the effective date of this transition provision, the covered entity has an existing contract or other written arrangement with a business associate, and such contract or arrangement is not renewed or modified between the effective date of this provision and the Privacy Rule's compliance date of April 14, 2003. The provisions are intended to allow those covered entities who qualify as described above to continue to disclose protected health information to the business associate, or allow the business associate to create or receive protected health information on its behalf, for up to one year beyond the Privacy Rule's compliance date, regardless of whether the contract meets the applicable contract requirements in the Privacy Rule. The Department proposes to deem such contracts to be compliant with the Privacy Rule until either the covered entity has renewed or modified the contract following the compliance date of the Privacy Rule (April 14, 2003), or April 14, 2004, whichever is sooner. In cases where a contract simply renews automatically without any change in terms or other action by the parties (also known as ''evergreen contracts''), the Department intends that such evergreen contracts would be eligible for the extension and that deemed compliance would not terminate when these contracts automatically roll over.

Covered entities that were concerned about timely compliance wanted to be able to incorporate the business associate contract requirements at the time they would otherwise be modifying or renewing the contract. Therefore, the extension would only apply until such time as the contract is modified or renewed following the effective date of this modification. Furthermore, the Department proposes to limit the deemed compliance period to one year, as the appropriate balance between maintaining individuals' privacy interests and alleviating the burden on the covered entity.

These transition provisions would apply to covered entities only with respect to written contracts or other written arrangements as specified above, and not to oral contracts or other arrangements. In addition, a covered entity that enters into a contract after the effective date of this modification must have a business associate contract that meets the applicable requirements of §§ 164.502(e) and 164.504(e) by April 14, 2003.

The proposed transition provisions would not apply to small health plans, as defined in the Privacy Rule. Small health plans would still be required to have business associate contracts that are in compliance with the Privacy Rule's applicable provisions, by the Privacy Rule's compliance deadline for such covered entities of April 14, 2004. The Department proposes to exclude this subset of covered entities from these provisions because the statute already provides an additional year for these smaller entities to come into compliance, which should be sufficient for compliance with the Privacy Rule's business associate provisions. In addition, the Department believes that the proposed model contract provisions (see the Appendix to the preamble) will assist small health plans and other covered entities in their implementation of the Privacy Rule's business associate provisions by April 14, 2004.

Proposed § 164.532(e)(2) provides that, after the Privacy Rule's compliance date, these new provisions would not relieve a covered entity of its responsibilities with respect to making protected health information available to the Secretary, including information held by a business associate, as necessary for the Secretary to determine compliance. Similarly, under proposed § 164.532(e)(2), these provisions would not relieve a covered entity of its responsibilities with respect to an individual's rights to access or amend his or her protected health information held by business associates, or receive an accounting of uses and disclosures by business associates, as provided for by the Privacy Rule's requirements at §§ 164.524, 164.526, and 164.528. Covered entities would still be required to fulfill individuals' rights with respect to their protected health information,

including information held by a business associate of the covered entity. Covered entities must ensure, in whatever manner effective, the appropriate cooperation by their business associates in meeting these requirements.

The Department retains without modification the standards and implementation specifications that apply to business associate relationships as set forth at §§ 164.502(e) and 164.504(e), respectively, of the Privacy Rule.

E. Uses and Disclosures of Protected Health Information for Marketing

The Privacy Rule defines ''marketing'' at § 164.501 as a communication about a product or service, a purpose of which is to encourage recipients of the communication to purchase or use the product or service, subject to certain limited exceptions. The definition does not limit the type or means of communication that is considered marketing. In general, a covered entity is not permitted to use or disclose protected health information for the purposes of marketing products or services that are not health-related without the express authorization of the individual. Moreover, the Privacy Rule prohibits a covered entity from selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of the third party, without the express authorization of the individual.

The Department understands that covered entities need to be able to discuss their own health-related products and services, or those of third parties, as part of their everyday business and as part of promoting the health of their patients and enrollees. For example, a health care provider may recommend to a patient a particular brand name drug for the treatment of that patient. Even though these communications also meet the above definition of ''marketing,'' the Privacy Rule does not require an authorization for such communications. Instead, the Privacy Rule addresses these types of health-related communications in two ways.

First, the Department did not want to interfere with or unnecessarily burden communications about treatment or about the benefits and services of plans and providers. Therefore, the Privacy Rule explicitly excludes from the definition of ''marketing'' certain health-related communications that may be part of a covered entity's treatment of the individual or its health care operations, but that may also promote the use or sale of a service or product. For example, communications made by a covered entity for the purpose of describing the participating providers and health plans in a network, or describing the services offered by a provider or the benefits covered by a health plan, are excluded from the definition of ''marketing.'' In addition, communications made by a health care provider as part of the treatment of a patient and for the purpose of furthering that treatment, or made by a covered entity in the course of managing an individual's treatment or recommending an alternative treatment, are not considered marketing under the Privacy Rule. These exceptions do not apply, however, to written communications for which a covered entity is compensated by a third party. The Department intended that covered entities be able to discuss freely their products and services and the products and services of others in the course of managing an individual's health care or providing or discussing treatment alternatives with an individual. Under the Privacy Rule, therefore, covered entities are permitted to use and disclose protected health information for these excepted activities without authorization under § 164.508.

Second, the Privacy Rule permits, at § 164.514(e), covered entities to use and disclose protected health information without individual authorization for other health-related communications that meet the definition of ''marketing,'' subject to certain conditions on the manner in which the communications are made. The Privacy Rule does not condition the substance of health-related marketing communications. Rather, it attempts to assure that individuals are aware of the source of the communication and the reason they received such communications, as well as to provide individuals with some control over whether or not they receive these communications in the future.

Specifically, the Privacy Rule permits a covered entity to use or disclose protected health information to communicate to individuals about the health-related products or services of the covered entity or of a third party if the communication: (1) Identifies the covered entity as the party making the communication; (2) identifies, if applicable, that the covered entity received direct or indirect remuneration from a third party for making the communication; (3) generally contains instructions describing how the individual may opt out of receiving future communications about health-related products and services; and (4) where protected health information is used to target the communication about a product or service to individuals based on their health status or health condition, explains why the individual has been targeted and how the product or service relates to the health of the individual. The Privacy Rule also requires a covered entity to make a determination, prior to using or disclosing protected health information to target a communication to individuals based on their health status or condition, that the product or service may be beneficial to the health of the type or class of individual targeted to receive the communication.

For certain permissible marketing communications, however, the Department did not believe these conditions to be practicable. Therefore, § 164.514(e) also permits, without the above conditions, a covered entity to make a marketing communication that occurs in a face-to-face encounter with the individual, or that involves products or services of only nominal value. These provisions permit a covered entity to discuss services and products, as well as provide sample products without restriction, during a face-to-face communication, or distribute calendars, pens, and other merchandise that generally promote a product or service if they are of only nominal value.

Public Comments

The Department received many comments on the Privacy Rule's marketing requirements, as well as recommendations from the NCVHS, based on public testimony from trade associations, medical associations, insurance commissioners, academic medical centers, non-profit hospitals, and consumers. Both industry and consumer groups argued that the marketing provisions were complicated and confusing. Covered entities expressed confusion over the Privacy Rule's distinction between health care communications that are excepted from the definition of ''marketing'' versus those that are marketing but permitted subject to the special conditions in § 164.514(e). For example, commenters questioned if, and if so, when, disease management communications or refill reminders are ''marketing'' communications subject to the special disclosure and opt-out conditions in § 164.514(e). Commenters also stated that it was unclear how to characterize various health care operations activities, such as general health-related educational and wellness promotional activities, and therefore unclear how to treat such activities under the marketing provisions of the Privacy Rule.

The Department also learned of a general dissatisfaction by consumers

with the conditions required by § 164.514(e). Many commenters questioned the general effectiveness of the conditions and whether the conditions would properly protect consumers from unwanted disclosure of protected health information to commercial entities, the re-disclosure of the information by these commercial entities, and the intrusion of unwanted solicitations. They did not feel that they were protected by the fact that commercial entities handling the protected health information would be subject to business associate agreements with covered entities. In addition, commenters expressed specific dissatisfaction with the provision at § 164.514(e)(3)(iii) for individuals to opt out of future marketing communications. Many argued for the opportunity to opt out of marketing communications before any marketing occurred. Others requested that the Department limit marketing communications to only those consumers that affirmatively chose to be the target of such communications.

Proposed Modifications

In response to these concerns, the Department proposes to modify the Privacy Rule to make the marketing provisions clearer and simpler. First, and most significantly, the Department proposes to simplify the Privacy Rule by eliminating the special provisions for marketing health-related products and services at § 164.514(e). Instead, any communication defined as ''marketing'' in § 164.501 would require authorization by the individual. In contrast to the Privacy Rule, under these proposed modifications, covered entities would no longer be able to make any type of marketing communications without authorization simply by meeting the disclosure and opt-out provisions in the Privacy Rule. The Department believes that requiring authorization for all marketing communications would effectuate greater consumer privacy protection not currently afforded by the disclosure and opt-out conditions of § 164.514(e) of the Privacy Rule.

Second, the Department proposes to maintain the substance of the Privacy Rule's definition of ''marketing'' at § 164.501, with minor clarifications. Specifically, the Department proposes to define ''marketing'' as ''to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service.'' The proposed modification retains the substance of the ''marketing'' definition, but changes the language slightly to avoid the implication that marketing is tied to the intent of the communication. Removing language referencing the purpose of the communication would shift the assessment of whether a communication is marketing from the intent of the speaker to the effect of the communication. If the effect of the communication is to encourage recipients of the communication to purchase or use the product or service, the communication would be marketing.

Third, with respect to the exclusions from the definition of ''marketing'' in § 164.501, the Department has tried to simplify the language to avoid confusion and better conform to other sections of the regulation, particularly in the area of treatment communications, and is proposing one substantive change. The modified language reads as follows: ''(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or service (or payment for such product or service) is provided by a covered entity or included in a plan of benefits; (2) For treatment of that individual; or (3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.''

With respect to the third exclusion, the Department is proposing to replace a communication made ''in the course of managing the treatment of that individual,'' with a communication for ''case management'' or ''care coordination'' for that individual. The Department is proposing these changes for clarity because ''case management'' and ''care coordination'' are the terms that are used in the definition of ''health care operations,'' while ''managing the treatment of that individual'' is not. These changes are not intended to increase the scope of the marketing exclusions.

The Department is proposing to eliminate the distinction in the definition of ''marketing'' at § 164.501 pertaining to written communications for which a covered entity is compensated by a third party. Under the Privacy Rule, exceptions from the definition of ''marketing'' are only applicable if the communication is made either orally or in writing when no remuneration from a third party has been paid to a covered entity for making the communication. The Department found that these rules led to confusion and many questions about treatment-related communications, such as prescription refill reminders. Many commenters felt that these restriction rules could burden the ability of providers and patients to communicate freely about treatment. Most commenters did not want any treatment communications to be considered marketing. The Department understands these concerns and wants to avoid situations where a health care provider would be required to obtain an authorization to send out a prescription refill reminder, even if the provider is compensated by a third party for the activity. Therefore, the Department proposes to eliminate this provision in order to facilitate necessary and important treatment communications.

None of these proposed modifications change the basic prohibition in the Privacy Rule against covered entities selling lists of patients or enrollees to third parties, or from disclosing protected health information to a third party for the independent marketing activities of a third party, without the express authorization of the individual.

The Department received numerous comments suggesting that the Privacy Rule's marketing exceptions in the definition and under § 164.514(e) may not allow for certain common health care communications, such as disease management, wellness programs, prescription refill reminders, and appointment notifications that individuals expect to receive as part of their health care to continue unimpeded. The Department believes that these types of communications are allowed under the exceptions to the definition of ''marketing'' in the Privacy Rule, and therefore would continue to be allowed under the proposed modification. The Department is interested in comments identifying specific types of communication that should or should not be considered marketing.

To reinforce the policy requiring an authorization for most marketing communications, the Department proposes to add a specific marketing provision at § 164.508(a)(3) explicitly requiring an authorization for a use or disclosure of protected health information for marketing purposes. Additionally, if the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the Department proposes that the authorization state this fact. As in the Privacy Rule at § 164.514(e)(2), proposed § 164.508(a)(3) would exclude from the marketing authorization requirements face-to-face communications made by a covered entity to an individual. The Department proposes to retain this exception in the Privacy Rule so that the marketing provisions would not interfere with the

relationship and dialogue between health care providers and individuals. Similarly, the Department proposes to retain the Privacy Rule's exception to the authorization requirement for a marketing communication that concerns products or services of nominal value, but proposes to replace the language with the common business term ''promotional gift of nominal value.''

Given the above proposal, the Department also proposes to remove § 164.514(e) as unnecessary. Accordingly, conforming changes to remove references to § 164.514(e) are proposed at § 164.502(a)(1)(vi) and in paragraph (6)(v) of the definition of ''health care operations'' in § 164.501.

With the elimination of the special rules in § 164.514(e), the Department thereby proposes to eliminate the requirement that disclosures for health-related marketing are limited to disclosures to business associates hired to assist the covered entity with the communication. Under the proposed rule, this distinction would serve no purpose, because an authorization would be required for such disclosures and thus the individual would know from the face of the authorization who will receive the information. Similarly, this simplification also would eliminate the requirement that a marketing communication identify the covered entity responsible for the communication. Under the proposal, the individual would have authorized the disclosure and thus would know which plans and providers are disclosing health information for marketing purposes. There would be added burden but no benefit in retaining an additional notification requirement.

F. Parents as Personal Representatives of Unemancipated Minors [1]

The Privacy Rule is intended to assure that parents have appropriate access to health information about their children. By generally creating new protections and individual rights with respect to individually identifiable health information, the Privacy Rule establishes new rights for parents with respect to the health information about their minor children in the vast majority of cases. In addition, the Department intended that State or other applicable law regarding disclosure of health information about a minor child to a parent should govern where such law exists.

Under the Privacy Rule, parents are granted new rights with respect to health information about their minor children as the personal representatives of their minor children. See § 164.502(g). Generally, parents will be able to access and control the health information about their minor children. See § 164.502(g)(3).

The Privacy Rule recognizes a limited number of exceptions to this general rule. These exceptions generally track the ability of certain minors to obtain specified health care without parental consent under State or other applicable laws. For example, every State has a law that permits adolescents to be tested for HIV without the consent of a parent. These laws are created to assure that adolescents will seek health care that is essential to their own health, as well as public health. In these exceptional cases, where a minor can obtain a particular health care service without the consent of a parent under State or other applicable law, it is the minor and not the parent who may exercise the privacy rights afforded to individuals under the Privacy Rule. See § 164.502(g)(3)(i)–(ii).

The Privacy Rule also allows the minor to exercise control of the protected health information when the parent has agreed to the minor obtaining confidential treatment (see § 164.502(g)(3)(iii)), and allows a covered health care provider to choose not to treat a parent as a personal representative of the minor when the provider is concerned about abuse or harm to the child. See § 164.502(g)(5).

Of course, a covered provider always may disclose health information about a minor to a parent in the most important cases, even if one of the limited exceptions discussed above apply. Disclosure of such information is always permitted as necessary to avert a serious and imminent threat to the health or safety of the minor. See § 164.512(j). The Privacy Rule also states that disclosure of health information about a minor to a parent is permitted if State law authorizes or requires disclosure to a parent, thereby allowing such disclosure where State law determines it is appropriate. See § 160.202, definition of ''more stringent.'' Finally, health information about the minor may be disclosed to the parent if the minor involves the parent in his or her health care and does not object to such disclosure. See §§ 164.502(g)(3)(i) and 164.510(b). The parent will retain all rights concerning any other health information about his or her minor child that does not meet one of the exceptions.

Rationale for Privacy Rule's Provisions Regarding Parents and Minors

The Department continues to balance multiple goals in developing standards in the Privacy Rule with respect to parents and minors. First, the standards need to operate in a way that facilitates access to quality health care. This is an overarching goal throughout the Privacy Rule and is equally important here. Thus, the Department wants to ensure that parents have appropriate access to the health information about their minor children to make important health care decisions about them. The Department also wants to make sure that the Privacy Rule does not interfere with a minor's ability to consent to and obtain health care under current State or other applicable law. Second, the Department does not want to interfere with State or other applicable laws related to competency or parental rights, in general, or the role of parents in making health care decisions about their minor children, in particular. Third, the Department does not want to interfere with the professional requirements of State medical boards or other ethical codes of health care providers with respect to confidentiality of health information or health care practices of such providers with respect to adolescent health care.

As a result of these competing goals, the Department's approach continues to be that the standards, implementation specifications, and requirements with respect to parents and minors defer to, and are consistent with, State or other applicable law and professional practice. Where State and other applicable law is silent, the Department has attempted to create standards that are consistent with such laws and that permit States the discretion to continue to decide the rights of parents and minors with respect to health information without interference from the federal Privacy Rule.

Public Comments

Since December 2000, the Department has heard concerns about the impact of the Privacy Rule on both parental and minor rights. Physicians and other health care professionals who treat adolescents support the existing provisions in the Privacy Rule. These commenters assert that these provisions allow health care providers to deliver care in a manner consistent with their ethical and legal obligations, and that they strike the appropriate balance by permitting providers to render confidential care to minors in limited circumstances, while providing States

[1] Throughout this section of the preamble, ''minor'' refers to an unemancipated minor and ''parent'' refers to a parent, guardian, or other person acting *in loco parentis*.

the ultimate discretion to determine the extent of parents' access to information.

Other commenters oppose the Privacy Rule on the grounds that the Privacy Rule unduly interferes with parental rights to control health care for their minor children and to access health information about their minor children. They assert that failure to provide parents with access to all health information about their minor children could result in negative health outcomes because parents could be making health care decisions for their children based on incomplete information.

Finally, some commenters believe, incorrectly, that the Privacy Rule creates new rights for minors to consent to treatment. The Department issued guidance to clarify that the Privacy Rule does not address access to treatment or the ability to consent to treatment. It is State or other applicable law, and not the Privacy Rule, that governs who can consent to treatment. The Privacy Rule does not in any way alter the ability of a parent to consent to health care for a minor child or the ability of a minor child to consent to his or her own health care.

Proposed Modifications

The Department has reassessed the parents and minors provisions in the Privacy Rule, and does not propose to change its approach. The Department will continue to defer to State or other applicable law and to remain neutral and preserve the status quo to the extent possible. However, the Department is proposing changes to these standards where they do not operate as intended and are inconsistent with the Department's underlying goals.

The Privacy Rule accomplishes the goals of deferring to State law and preserving the status quo when State law is definitive, that is, when State law requires or prohibits disclosure or access. However, when State law provides discretion or is silent, the Privacy Rule may not always accomplish these goals. In particular, the Department has identified two areas in which the standard does not work as intended. First, the language regarding deference to State law that authorizes or prohibits disclosure of health information about a minor to a parent fails to assure that State law governs when the law grants a provider discretion to disclose protected health information to a parent in certain circumstances. Second, the Privacy Rule may prohibit parental access in cases where State law is silent, but where a parent could get access today, consistent with State law.

First, in order to assure that State and other applicable laws that address disclosure of health information about a minor to his or her parent govern in all cases, the Department proposes to move the relevant language about the disclosure of health information from the definition of ''more stringent'' (see § 160.202) to the standards regarding parents and minors (*see* § 164.502(g)(3)). This change would make it clear that State and other applicable law governs not only when a State explicitly addresses disclosure of protected health information to a parent but also when such law provides discretion to a provider.

The language itself is also changed in the proposal to adapt it to the new section. The proposed language in § 164.502(g)(3)(ii) states that a covered entity may disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure, and that a covered entity may not disclose protected health information about a minor to a parent if an applicable provision of State or other law, including applicable case law, prohibits such disclosure. This new language would help clarify when disclosure of health information about a minor to his or her parent is permitted or prohibited based on State or other law. The revision would also clarify that the deference to State or other applicable law includes deference to established case law as well as an explicit provision in a statute or regulation.

Second, the Department proposes to add a new paragraph (iii) to § 164.502(g)(3) to establish a neutral policy regarding the right of access of a parent to health information about a minor under § 164.524, in the rare circumstance in which the parent is technically not the personal representative of the minor under the Privacy Rule. This policy would apply particularly where State or other law is silent or unclear. The new paragraph would not change the right of access, but would simply provide that the person who can exercise the right of access to health information under the Privacy Rule must be consistent with State or other applicable law. It would assure that the Privacy Rule would not prevent a covered entity from providing such access, in accordance with the Privacy Rule, to a parent, as if a personal representative of the minor child, if access would be consistent with State or other applicable law.

This modification also would not affect a parent's right of access under the Privacy Rule in the vast majority of cases where the parent is the personal representative of the minor. In those cases, the parent could exercise the right of access in accordance with the Privacy Rule. This provision would be relevant only in the rare exceptions in which the parent is not the personal representative of the minor.

The Department proposes to use the phrase ''consistent with State or other applicable law'' with regard to access in the personal representatives section of the Privacy Rule. This is different than the proposed language in the section about personal representatives that relates to disclosures, in which a disclosure to a parent is permitted if such disclosure is permitted or required by an ''applicable provision of State or other law, including applicable case law.'' The language in the disclosure paragraphs requires an explicit law for such disclosure to be permitted by the Privacy Rule. The language in the access paragraphs permits parental access in accordance with the Privacy Rule if such access is consistent with State or other law, regardless of whether such law is explicit. Therefore, if a State permits a minor to obtain care without the consent of a parent, but is silent as to whether the parent can access the related medical records of the minor, as is typically the case, then the provider may provide access to the parent if such access is consistent with State law and could deny access to the parent if such denial of access is consistent with State law. This may be based on interpretation of State consent law or may be based on other law. The provider could not, however, abuse this provision to deny access to both the parent and the minor.

This provision would not significantly change the operation of the Privacy Rule with respect to parental access. In cases where the parent is not the personal representative of the minor under the Privacy Rule, the proposed language would not require a provider to grant access to a parent. In these cases, a provider would have discretion to provide access to a parent when permitted to do so under State or other applicable law despite the ability of the minor to obtain health care confidentially or without parental consent under applicable law or professional practice. The Department further assumes that current professional health care provider practices with respect to access by parents and confidentiality of minor's records are consistent with State and other applicable law. In any event, parental access under this section would continue to be subject to any relevant limitations on access in

§ 164.524. This proposed change provides States with the option of clarifying the interaction between their consent laws and the ability for parents to have access to the health information about the care that their minor children received in accordance with such laws. As such, this change should more accurately reflect current State law.

G. Uses and Disclosures for Research Purposes

1. Institutional Review Board (IRB) or Privacy Board Approval of a Waiver of Authorization

Much of the biomedical and behavioral research conducted in the U.S. is governed either by the rule entitled ''Federal Policy for the Protection of Human Subjects'' (the ''Common Rule'') and/or the Food and Drug Administration's (FDA) human subject protection regulations. Although these regulatory requirements, which apply to federally-funded and to some privately-funded research, include protections to help ensure the privacy of subjects and the confidentiality of information, the intent of the Privacy Rule, among other things, is to supplement these protections by requiring covered entities to implement specific measures to safeguard the privacy of individually identifiable health information.

The Common Rule applies to all human research that is supported, conducted, or regulated by any of the seventeen federal agencies that have adopted the Common Rule, including research that uses individually identifiable health information. FDA's human subject protection regulations generally apply to clinical investigations under FDA's jurisdiction, whether or not such research is federally funded. Both sets of regulations have requirements relating to review by an institutional review board (IRB) to ensure that the risks to research participants, including privacy risks, are minimized. As part of this review, generally, IRBs must consider the informed consent document that will be used to inform prospective research participants about the study. Both the Common Rule and FDA regulations have provisions relating to the waiver of informed consent. The Common Rule waiver provisions allow research covered by the Common Rule to be conducted if an IRB determines that certain criteria specified in the Common Rule have been met. FDA's regulations do not contain equivalent waiver provisions since the criteria for a waiver of informed consent are generally not appropriate for clinical research. However, FDA's human subject protection regulations contain exceptions to informed consent for emergency research and for the emergency use of an investigational product.

The Common Rule and FDA's regulations explicitly address privacy and confidentiality in the following places: (1) The informed consent document is required to include ''a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained'' (Common Rule § ____.116(a)(5), 21 CFR 50.25(a)(5)); and (2) to approve a study an IRB must determine that ''when appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data'' (Common Rule § ____.111(a)(7), 21 CFR 56.111(a)(7)).

Privacy Rule

The Privacy Rule builds upon these existing federal regulations. The requirements are intended to strike a balance by minimizing the privacy risks of research participants, while not impeding the conduct of vital national and international research. For research participants, this means that they will have more information about how their protected health information may be used for research purposes. The Privacy Rule requires researchers who are subject to the Common Rule or FDA's human subject protection regulations to make some changes to the way they use and disclose protected health information. Researchers who are not currently subject to these requirements may, however, need to make more significant changes to current practice.

The Privacy Rule at §§ 164.508 and 164.512(i) establishes the conditions under which covered entities may disclose protected health information for research purposes. In general, covered entities are permitted to use or disclose protected health information for research either with individual authorization, or without individual authorization in limited circumstances and under certain conditions.

A covered entity is permitted to use and disclose protected health information for research purposes with an authorization from the research participant that meets the requirements of § 164.508 of the Privacy Rule. Additional requirements apply to research that is not solely record-based but, rather, involves the treatment of individuals. Specifically, in order for a covered entity to use or disclose protected health information that it creates from a research study that includes treatment of individuals (e.g., a clinical trial), the Privacy Rule at § 164.508(f) requires that additional research-specific elements be included in the authorization form, which describes how protected health information created for the research study will be used or disclosed. The Privacy Rule provides that such an authorization pursuant to § 164.508(f) may be combined with the traditional informed consent document used in research, as well as the consent required under § 164.506 and the notice of privacy practices required under § 164.520. In addition, a covered entity is permitted to condition the provision of the research-related treatment on the individual's authorization for the covered entity to use and disclose protected health information created from the study. The Privacy Rule, however, does not permit an individual authorization form for a research use or disclosure of *existing* protected health information to be combined with a research informed consent document or an authorization form for research that involves treatment.

Alternatively, a covered entity is permitted to use or disclose protected health information for research purposes without authorization by the research participant if the covered entity first obtains either of the following:

- Documentation of approval of a waiver of authorization from an IRB or a Privacy Board. The Privacy Rule delineates specific requirements for the elements that must be documented, including the Board's determinations with respect to eight defined waiver criteria.
- Where a review is conducted preparatory to research or where research is conducted on decedent's information, certain representations from the researcher, including that the use or disclosure is sought solely for such a purpose and that the protected health information is necessary for the purpose.

Public Comment

A number of commenters argued that the waiver criteria in the Privacy Rule were confusing, redundant, and internally inconsistent. These commenters urged the Department to simplify the provisions, especially for entities subject to both the Privacy Rule and the Common Rule. Consequently, these commenters recommended that the Privacy Rule be modified to allow protected health information to be used or disclosed for research without individual authorization if informed consent is obtained as stipulated by the Common Rule or FDA's human subject protection regulations, or waived as

stipulated by the Common Rule. Commenters who favored these changes asserted that the existing federal human subject protection regulations adequately protect all of the rights and welfare of human subjects, and therefore, the Privacy Rule's provisions are unnecessary and duplicative for research currently governed by federal regulations. These commenters also argued that the Privacy Rule's waiver criteria and requirements for individual authorization, in effect, inappropriately modify the Common Rule, since the Privacy Rule prohibits covered entities from honoring an IRB's decisions unless the Privacy Rule's requirements are met. Some of these commenters further suggested that the confidentiality provisions of the Common Rule and FDA's human subject protection regulations be reviewed to determine if they adequately protect the privacy of research participants, and if found to be inadequate, these regulations should be modified.

The Department understands commenters' recommendations to simplify the Privacy Rule as it applies to research. However, as stated in the preamble to the Privacy Rule and the Department's July 6 guidance, the Department disagrees that the Privacy Rule will modify the Common Rule. The Privacy Rule regulates only the content and conditions of the documentation that covered entities must obtain before using or disclosing protected health information for research purposes.

The NCVHS also heard a number of concerns and confusion in testimony at the August 2001 hearing regarding the research provisions in the Privacy Rule. As a result, the NCVHS generally recommended that the Department provide additional guidance in this area. Consistent with this recommendation, the HHS Office for Civil Rights and the HHS Office for Human Research Protections intend to work together to provide interpretations, guidance, and technical assistance to help the research community in understanding the relationship between the Privacy Rule and the Common Rule.

The NCVHS also received testimony requesting that uses and disclosures of protected health information for research be characterized as an element of treatment, payment, and health care operations under the Privacy Rule, and thus be permitted without individual authorization. The NCVHS, in their recommendations to the Department, disagreed with this viewpoint, and expressed support for the policy embodied in the Privacy Rule, permitting uses and disclosures for research pursuant to an authorization or an IRB or Privacy Board waiver of authorization.

In addition, the NCVHS received testimony regarding the issue of recruiting research subjects. Commenters expressed concern and confusion as to how researchers would be able to recruit research subjects when the Privacy Rule does not permit protected health information to be removed from the covered entity's premises during reviews preparatory to research. The NCVHS recommended that the Department provide guidance on this issue. The Department clarifies that the Privacy Rule's provisions for IRB or Privacy Board waiver of authorization are intended to encompass a partial waiver of authorization for the purposes of allowing a researcher to obtain protected health information necessary to recruit potential research participants. For example, even if an IRB does not waive informed consent and individual authorization for the study itself, it may waive such authorization to permit the disclosure of protected health information to a researcher as necessary for the researcher to be able to contact and recruit individuals as potential research subjects.

Many researchers also expressed concerns that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being subject to IRB review than is currently the case. These commenters requested that the standards for de-identification be changed in order to make de-identification a more plausible option for the sharing of data with researchers.

The Privacy Rule's de-identification safe harbor was not designed to be used for research purposes. Rather, the Privacy Rule permits uses and disclosures of protected health information for research purposes with individual authorization, or pursuant to an IRB or Privacy Board waiver of authorization as permitted by § 164.512(i). The Department is aware, however, that some research is conducted today without IRB oversight because the information is not facially identifiable. While the Department is not convinced of the need to modify the safe harbor standard for de-identified information, the Department is requesting comment on an alternative approach that would permit uses and disclosures of a limited data set for research purposes which does not include facially identifiable information but in which certain identifiers remain. See section III.I of the preamble regarding de-identification of protected health information for a detailed discussion of this proposed approach.

A number of commenters were concerned about the Privacy Rule's requirement for ''a statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke * * *'', because this provision would prohibit researchers from analyzing the data collected prior to the individual's decision to revoke his or her authorization. The Department is not proposing to modify this provision. The Privacy Rule limits an individual's right to revoke his or her authorization by the extent to which the covered entity has taken action in reliance on the authorization. Therefore, even though a revocation will prohibit a covered entity from further disclosing protected health information for research purposes, the exception to this requirement is intended to allow for certain continued uses of the information as appropriate to preserve the integrity of the research study, *e.g.,* as necessary to account for the individual's withdrawal from the study.

The Department believes that researchers have established practices for accommodating an individual's decision to withdraw from a research study. Indeed, the Common Rule at § ___.46.116 and FDA's human subject protection regulations at 21 CFR 50.25(a)(8) contain similar provisions that require the informed consent document include a statement that ''* * * the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.'' However, the Department understands that these practices may not be uniform and may vary depending on the nature of the research being conducted, with respect to the continued use or disclosure of data collected prior to the participant's withdrawal. If covered entities were permitted to continue using or disclosing protected health information for the research project even after an individual had revoked his or her authorization, this would undermine the primary objective of the authorization requirements to be a voluntary, informed choice of the individual. The Department believes that limiting uses and disclosures following revocation of an authorization to those necessary to preserve the integrity of the research appropriately balances the individual's right of choice and the researcher's reliance on the authorization. However, the Department solicits comment on other means of achieving this balance.

Specific comments, including testimony to the NCVHS, are addressed below where relevant to the corresponding proposed modifications to the Privacy Rule.

Proposed Modifications to Waiver Criteria

The Department understands commenters' concerns that several of the Privacy Rule's criteria for the waiver of a research participant's authorization are confusing and redundant, or inconsistent and conflicting with the Common Rule's requirements for the waiver of an individual's informed consent. However, since the Common Rule's criteria for the waiver of informed consent do not explicitly require IRBs to consider issues related to the privacy of prospective research participants, the Department disagrees with the recommendation to exempt from the Privacy Rule research uses and disclosures that are made with a waiver of informed consent pursuant to the Common Rule.

In response to commenter concerns, the Department proposes the following modifications to the waiver criteria to maintain uniform standards in the Privacy Rule for all research, whether or not the research is subject to the Common Rule, as well as to ensure that the Privacy Rule's waiver process works more seamlessly with the Common Rule's waiver process. The Department, in reassessing the waiver criteria defined by the Common Rule, believes that only two of the Common Rule waiver criteria are practicable when focused solely on patient privacy. Accordingly, the Department proposes to retain the following two criteria in the Privacy Rule that are comparable to two of the Common Rule criteria: (1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals; and (2) the research could not practicably be conducted without the waiver or alteration. The criterion in the Common Rule to determine that the rights and welfare of subjects will not adversely be affected, when limited to privacy, seems to conflict with the criterion regarding assessing minimal privacy risk; it is not clear how both criteria can be met when the focus is solely on privacy. The Department therefore proposes to delete the criterion in the Privacy Rule that the alteration or waiver will not adversely affect the privacy rights and the welfare of the individuals.

Moreover, the Department understands commenters' concerns that substantial overlap and potential inconsistency may exist among three of the Privacy Rule's criteria and the criterion that the use or disclosure involves no more than a minimal risk to the individuals. The Department believes that the three criteria in the Privacy Rule that focus on (1) plans to protect identifiers from improper use and disclosure, (2) plans to destroy the identifiers at the earliest opportunity, and (3) adequate written assurances against redisclosure, essentially help to define when the research use or disclosure poses only a minimal risk to the individual's privacy interests, rather than operate as stand-alone criteria. As such, the Department proposes to require the assessment of these three factors as part of the waiver criterion for assessment of minimal privacy risk. This provision does not preclude the IRB or Privacy Board from assessing other criteria as necessary to determine minimal privacy risk, *e.g.,* whether the safeguards included in the protocol are appropriate to the sensitivity of the data.

In addition, the Department agrees with commenters that the following waiver criterion is unnecessarily duplicative of other provisions to protect patients' confidentiality interests, and therefore, proposes to eliminate it: the privacy risks to individuals whose protected health information is to be used or disclosed are reasonable in relation to the anticipated benefits, if any, to the individual, and the importance of the knowledge that may reasonably be expected to result from the research.

Lastly, the Department proposes to retain the criterion that the research could not practicably be conducted without access to and use of the protected health information. The Privacy Rule permits a covered entity to reasonably rely on a researcher's documentation of approval of these waiver criteria, and a description of the data needed for the research as approved by an IRB or Privacy Board, to satisfy it's obligation with respect to limiting the disclosure to the minimum necessary.

In sum, the Department proposes that the following wavier criteria replace the waiver criteria listed in the Privacy Rule at § 164.512(i)(2)(ii):

(1) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements:

(a) an adequate plan to protect the identifiers from improper use and disclosure;

(b) an adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(c) adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research project, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(2) The research could not practicably be conducted without the waiver or alteration; and

(3) The research could not practicably be conducted without access to and use of the protected health information.

The Department believes that the proposed modifications to the waiver criteria in the Privacy Rule would eliminate both the redundancies in the waiver criteria and the conflicts these provisions pose to research conducted pursuant to the Common Rule.

2. Research Authorizations

Several commenters argued that certain authorization requirements in the Privacy Rule at § 164.508 are problematic as applied to research uses and disclosures. Generally, commenters raised concerns that the requirements for individual authorization for uses and disclosures for research purposes are unduly complex and burdensome. In response to these concerns, the Department proposes to make a number of modifications to simplify the authorization requirements, both generally and in certain circumstances as they specifically apply to uses and disclosures of protected health information for research. The discussion below focuses on the proposed modifications specific to uses and disclosures for research. See section III.H of the preamble for a discussion of the Department's general proposal to modify the Privacy Rule's authorization requirements.

In particular, the Department proposes a single set of requirements that generally apply to all types of authorizations, including those for research purposes. This modification would eliminate the specific provisions at § 164.508(f) for authorizations for uses and disclosures of protected health information created for research that includes treatment of the individual. As a result, an authorization for such purposes would not require any additional elements above and beyond those required for authorizations in general at § 164.508(c). To conform to this proposed change, the Department also proposes to modify the requirements for prohibiting

conditioning of authorizations at § 164.508(b)(4)(i) to remove the reference to § 164.508(f). A covered health care provider, thus, would be able to condition the provision of research-related treatment on provision of an authorization for the use and disclosure of protected health information for the particular research study.

Additionally, the Department proposes to modify § 164.508(b)(3)(i) to reflect its intent to eliminate the special authorization requirements for research studies that involve treatment in § 164.508(f), as well as to clarify that the Privacy Rule would allow an authorization for the use or disclosure of protected health information for research to be combined with any other legal permission related to the research study, including another authorization or consent to participate in the research. The Department heard from several provider groups who thought the authorization provisions as they relate to research to be too complex. These commenters argued in favor of permitting covered entities to combine all of the research authorizations required by the Privacy Rule with the informed consent to participate in research. To simplify the requirements in response to these concerns, the Department proposes to modify the Privacy Rule to allow for the combining of such permissions.

Finally, the Department proposes to include provisions specific to authorizations for research within the core element proposed at § 164.508(c)(1)(v) for an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. First, the Department proposes to explicitly provide that the statement ''end of the research study'' or similar language is sufficient to meet this requirement for an expiration date or event where the authorization is for a use or disclosure of protected health information for research. This modification is proposed in response to commenter concerns that the particular end date of a research study may not be known and questions regarding whether the end of a research study is an ''event''. In addition, such a statement would also be sufficient to encompass additional time, even after the conclusion of the research, to allow for the use of protected health information as necessary to meet record retention requirements to which the researcher is subject. The Department, therefore, proposes to clarify that including such a statement on the research authorization would fulfill the requirement to include an expiration event.

Similarly, the Department proposes to explicitly provide that the statement ''none'' or similar language is sufficient to meet this provision if the authorization is for a covered entity to use or disclose protected health information for the creation or maintenance of a research database or repository. The Department proposes this modification in response to commenter concerns that the Privacy Rule's requirement for an ''expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure'' will create a significant obstacle for the development of research databases or repositories. Commenters stated that research databases and repositories are often retained indefinitely, and the requirement that an authorization include an expiration date or event was found to be counter to the purpose of developing such research resources. The Department understands these concerns and, therefore, proposes to permit an individual's authorization to use or disclose protected health information for the creation and maintenance of a research database or repository to be valid without an expiration date or event. The Department emphasizes that this provision is intended to apply only in the limited circumstances where a use or disclosure is sought solely for the creation or maintenance of a database or repository, and does not extend to authorizations for further research or any other purpose. Therefore, subsequent research using the information maintained in the database or repository pursuant to an authorization would require that the authorization include the term ''end of the research study'' or other explicit expiration date or event.

3. Research Transition Provisions

The Privacy Rule includes at § 164.532 different transition requirements for research that includes treatment (*i.e.,* clinical trials) and for research that does not include treatment (*i.e.,* records research). For research that includes treatment, the Privacy Rule states that as long as legal permission was obtained to use or disclose protected health information for a specific research project, that legal permission will continue to be valid until the completion of the research project; a new permission will not be required to use or disclose protected health information that was created or received either before or after the compliance date. However, for research that does not include treatment, a legal permission obtained before the compliance date will only be valid for the use and disclosure of protected health information obtained before the compliance date. The Privacy Rule does not prescribe the form of the express legal permission in either case. Express legal permission could be a signed agreement by the individual to participate in a privately-funded research study.

The Privacy Rule does not explicitly address transition provisions for research studies ongoing after the compliance date where the legal permission of the individual had not been sought. This point was noted by several of those who commented on the Privacy Rule's transition provisions as they apply to research. Some of these commenters recommended that the Privacy Rule be revised to grandfather in the research use and disclosure of all protected health information that existed prior to the compliance date. These commenters expressed concern that much data would be lost to the research community since it would often be infeasible or impossible to obtain individuals' permission to use this archival information.

Given the confusion about the transition provisions and to assure that ongoing, vital research will not be impeded, the Department reassessed the relevant provisions and proposes that there be no distinction between research that includes treatment and research that does not, and no distinction between requirements for research conducted with patients' informed consent versus research conducted with an IRB-approved waiver of patients' informed consent. Therefore, the Department proposes to permit a covered entity to use or disclose for a specific research study protected health information that is created or received either before or after the compliance date (if there is no agreed-to restriction in accordance with § 164.522(a)), if the covered entity has obtained, prior to the compliance date an authorization or other express legal permission from an individual to use or disclose protected health information for the research study. In addition, the Department proposes to grandfather in research in which the individual has signed an informed consent to participate in the research study, or an IRB has waived informed consent for the research study, in accordance with the Common Rule or FDA's human subject protection regulations.

These proposed provisions are intended to apply once any of the permissions described above has been granted, regardless of whether the

research study actually has begun by the compliance date or not, provided that the permission was obtained prior to the compliance date. In addition, with respect to the informed consent of the individual, the Department proposes not to limit the transition provisions to an informed consent pursuant to the Common Rule, but rather intends to allow for the transition of an informed consent for privately-funded research. Research studies that do not obtain such express legal permission, informed consent, or IRB waiver prior to the compliance date must obtain either authorization, as required by § 164.508, or a waiver of authorization from an IRB or Privacy Board, as required by § 164.512(i).

H. Uses and Disclosures for Which Authorization Is Required

The Privacy Rule permits covered entities to use and disclose protected health information for treatment, payment, and health care operations (subject to the individual's consent, if applicable) and as necessary for public policy purposes, such as public health and safety, health oversight activities, and enforcement. Covered entities must obtain an individual's voluntary and informed authorization before using or disclosing protected health information for any purpose that is not otherwise permitted or required under the Privacy Rule.

The Privacy Rule provides for the individual's voluntary authorization for uses and disclosure of his or her protected health information by prohibiting, with very limited exceptions, covered entities from conditioning treatment, payment, or eligibility for benefits or enrollment in a health plan, on obtaining an authorization. Furthermore, in § 164.508(b)(5), the Privacy Rule permits individuals, with limited exceptions, to revoke an authorization at any time. These provisions are intended to prevent covered entities from coercing individuals into signing an authorization that is not necessary for their health care.

To help ensure that individuals give their authorization for the use or disclosure of their protected health information on an informed basis, the Privacy Rule, under § 164.508(c), sets out core elements that must be included in any authorization. These core elements are intended to provide individuals with information needed to make an informed decision about giving their authorization. This information includes specific details about the use or disclosure, as well as providing the individual fair notice about his or her rights with respect to the authorization and the potential for the information to be redisclosed. The Privacy Rule requires authorizations to provide individuals with additional information for specific circumstances under the following three sets of implementation specifications: in § 164.508(d), for authorizations requested by a covered entity for its own uses and disclosures; in § 164.508(e), for authorizations requested by a covered entity for disclosures by others; and in § 164.508(f), for authorizations for research that includes treatment of the individual. Additionally, the authorization must be written in plain language so individuals can understand the information presented in the authorization.

Public Comments

The Department received a number of comments raising various issues regarding implementation of the authorization requirements. A majority of commenters said the authorization provisions of the Privacy Rule are too complex and confusing. Some commented that the sets of implementation specifications are not discrete, creating the potential for the implementation specifications for specific circumstances to conflict with the required core elements. Others expressed confusion generally about which authorization requirements they would be required to implement.

Commenters also have raised concerns about the revocation provisions in § 164.508(b)(5). The Privacy Rule provides an exception to the individual's right to revoke an authorization where the authorization is obtained as a condition of obtaining insurance coverage, or where other law provides the insurer the right to contest a claim under the policy. The Department intended this provision to permit insurers to obtain necessary protected health information during contestability periods under State law. For example, an individual may not revoke an authorization for the disclosure of protected health information to a life insurer for the purpose of investigating material misrepresentation if the individual's policy is still subject to the contestability period. However, commenters were concerned because other law also provides the insurer with the right to contest the policy itself, not just a claim under the policy, and the Privacy Rule does not provide an explicit exception to allow for this right.

Proposed Modifications

In response to these concerns, the Department is proposing modifications to the Privacy Rule to simplify the authorization provisions, while preserving the provisions for ensuring that authorizing the use or disclosure of protected health information is a voluntary and informed decision. The Department proposes to consolidate the implementation specifications into a single set of criteria to simplify these provisions, prevent confusion, and eliminate the potential for conflicts between the authorization requirements.

Thus, under the proposed modifications, the specifications for the elements and requirements of an authorization would be consolidated under § 164.508(c). Paragraphs (d), (e), and (f) in this section would be eliminated. Paragraph (c)(1) would require all authorizations to contain the following core elements: (1) A description of the information to be used or disclosed, (2) the identification of the persons or class of persons authorized to make the use or disclosure of the protected health information, (3) the identification of the persons or class of persons to whom the covered entity is authorized to make the use or disclosure, (4) a description of each purpose of the use or disclosure, (5) an expiration date or event, (6) the individual's signature and date, and (7) if signed by a personal representative, a description of his or her authority to act for the individual. The Department also proposes to add new language to clarify that when the individual initiates the authorization for his or her own purposes, the purpose may be described as ''at the request of the individual.'' Thus, individuals would not have to reveal the purpose of the requested disclosure if they chose not to do so.

Paragraph (c)(2) would require authorizations to contain the following notifications: (1) A statement that the individual may revoke the authorization in writing, and either a statement regarding the right to revoke, and instructions on how to exercise such right, or to the extent this information is included in the covered entity's notice, a reference to the notice, (2) a statement that treatment, payment, enrollment, or eligibility for benefits may not be conditioned on obtaining the authorization if such conditioning is prohibited by the Privacy Rule, or, if conditioning is permitted by the Privacy Rule, a statement about the consequences of refusing to sign the authorization, and (3) a statement about the potential for the protected health information to be subject to redisclosure

by the recipient. The Department also proposes to limit the requirement that a covered entity disclose any remuneration that will result from obtaining an authorization, to authorizations for marketing purposes. Therefore, the remuneration disclosure requirement appears only in the new § 164.508(a)(3) on marketing authorizations. These modifications would permit covered entities to use a single authorization form, and make it easier to use for the individual and the covered entity, as well as third parties.

The Department also proposes to add language to the revocation exceptions in § 164.508(b)(5)(ii) to include an exception with respect to the insurer's right to contest the policy under other law. This proposed modification would recognize, without expanding upon, an insurer's right to contest the policy under existing law.

Other proposed modifications concerning authorizations for research are discussed in section III.G of the preamble.

Finally, the Department proposes a number of technical conforming modifications throughout this section of the Privacy Rule to accommodate the modifications to this section, as well as the proposed modifications to the consent provision. Specifically, the Department proposes to modify the exception to the minimum necessary standard in the Privacy Rule at § 164.502(b)(2), which exempts from the standard uses or disclosures made pursuant to an authorization under § 164.508, except for authorizations requested by the covered entity under § 164.508(d), (e), or (f). By simplifying the authorization requirements, the proposed modifications described above would eliminate the special authorizations required by § 164.508(d), (e), or (f) in the Privacy Rule. To be consistent with the proposed approach, the Department proposes to eliminate the reference to such authorizations in the exception at § 164.502(b)(2), thereby expanding the exception to exempt from the minimum necessary standard uses and disclosures made pursuant to an authorization for any purpose.

The Department also proposes modifications at §§ 164.508(a)(2)(i)(A), (B), and (C) to place limits on the use and disclosure of psychotherapy notes without authorization to carry out treatment, payment or health care operations. The modifications clarify that this information is not permitted to be used or disclosed without individual authorization for purposes of another entity.

The Department proposes to delete § 164.508(b)(4)(iii), relating to a health plan conditioning payment of a claim on the provision of an authorization, since this provision will be rendered moot under the proposed modifications to the consent provision. Additionally, the Department proposes to delete § 164.508(b)(2)(iv) of the Privacy Rule, because it is redundant with § 164.508(b)(1)(i), and to modify § 164.508(b)(1)(i) to clarify that an authorization is valid only if it meets the requirements of paragraphs (c)(1) and (c)(2). Modifications are also proposed at § 164.508(b)(1)(v) of the Privacy Rule (newly designated as § 164.508(b)(2)(iv) in the proposed Rule) to clarify that an authorization that violates paragraph (b)(4) (prohibiting the conditioning of authorizations) is not a valid authorization.

These proposed modifications also expressly provide that an authorization is needed for purposes of marketing. *See* section III.G of the preamble for a detailed discussion of the proposed modifications regarding marketing.

I. De-Identification of Protected Health Information

At § 164.514(a)–(c), the Privacy Rule permits a covered entity to de-identify protected health information so that such information may be used and disclosed freely, without being subject to the Privacy Rule's protections. Health information is de-identified, or not individually identifiable, under the Privacy Rule, if it does not identify an individual and if the covered entity has no reasonable basis to believe that the information can be used to identify an individual. In order to meet this standard, the Privacy Rule provides two alternative methods for covered entities to de-identify protected health information.

First, a covered entity may demonstrate that it has met the standard if a person with appropriate knowledge and experience applying generally acceptable statistical and scientific principles and methods for rendering information not individually identifiable makes and documents a determination that there is a very small risk that the information could be used by others to identify a subject of the information. The preamble to the Privacy Rule refers to two government reports that provide guidance for applying these principles and methods, including describing types of techniques intended to reduce the risk of disclosure that should be considered by a professional when de-identifying health information. These techniques include removing all direct identifiers, reducing the number of variables on which a match might be made, and limiting the distribution of records through a ''data use agreement'' or ''restricted access agreement'' in which the recipient agrees to limits on who can use or receive the data.

Alternatively, covered entities may choose to use the Privacy Rule's safe harbor method for de-identification. Under the safe harbor method, covered entities must remove all of a list of 18 enumerated identifiers and have no actual knowledge that the information remaining could be used alone or in combination to identify a subject of the information. The identifiers that must be removed include direct identifiers, such as name, street address, social security number, as well as other identifiers, such as birth date, admission and discharge dates, and five-digit zip code. The safe harbor does allow for the disclosure of all geographic subdivisions no smaller than a State, as well as the initial three digits of a zip code if the geographic unit formed by combining all zip codes with the same initial three digits contains more than 20,000 people. In addition, age, if less than 90, gender, ethnicity, and other demographic information not listed may remain in the information. The safe harbor is intended to provide covered entities with a simple, definitive method that does not require much judgment by the covered entity to determine if the information is adequately de-identified.

The Privacy Rule also allows for the covered entity to assign a code or other means of record identification to allow de-identified information to be re-identified by the covered entity, if the code is not derived from or related to information about the subject of the information, *e.g.,* derivation of the individual's social security number, and is not otherwise capable of being translated so as to identify the individual. The covered entity also may not use or disclose the code for any other purpose, and may not disclose the mechanism, *e.g.,* algorithm or other tool, for re-identification.

The Department is cognizant of the increasing capabilities and sophistication of electronic data matching used to link data elements from various sources, and from which, therefore, individuals may be identified. Given this increasing risk to individuals' privacy, the Department included in the Privacy Rule the above stringent standards for determining when information may flow unprotected. The Department also wanted the standards to be flexible enough so the Privacy Rule would not be a disincentive for covered entities to use or disclose de-identified

information wherever possible. The Privacy Rule, therefore, strives to balance an individuals' privacy interests with providing a sufficient level of information to make de-identified databases useful.

Public Comments

The Department heard a number of concerns from commenters regarding the de-identification standard in the Privacy Rule. These comments generally were raised in the context of using and disclosing information for research, public health purposes, or for certain health care operations. Commenters were concerned that the safe harbor method for de-identifying protected health information was so stringent that it required removal of many of the data elements that were essential to their analyses for these purposes. The comments, however, demonstrated little consensus as to which data elements were needed for such analyses, with many commenters requesting elements, such as birth date, neighborhood, account numbers, medical record numbers, and device identifiers. In addition, commenters largely were silent with regard to the feasibility of using the Privacy Rule's alternative statistical method to de-identify information. The Department is aware, however, of a general view of covered entities that the statistical method is beyond their capabilities.

With regard to health care operations, a number of state hospital associations were concerned that the Privacy Rule will prevent them from collecting patient information from area hospitals in order to conduct and disseminate analyses that are useful for hospitals in making decisions about quality and efficiency improvements. These commenters explained that the Privacy Rule's stringent provisions for de-identification would not allow for the necessary data elements to be collected for such analyses. Specifically, commenters identified the following critical elements that would be restricted from disclosure by the Privacy Rule's de-identification standard: Five-digit zip code, city, county or neighborhood; the dates on which the injury or illness was treated and the patient released from the hospital; and the month of birth (noted by commenters as especially important for very young children). In addition, commenters argued that the Privacy Rule's provisions for data aggregation by a business associate, while allowing for the collection and aggregation of identifiable data from multiple hospitals for quality and efficiency purposes, would not allow state hospital associations to disclose all the desired analyses back to the contributing hospitals because some identifiers would remain in the data. These commenters emphasized the importance to hospitals to have access to information about community health care needs and the ability to compare their community to others in the state so that they may adequately respond to and fulfill such needs.

In addition, commenters identified a problem with hospitals themselves sharing aggregated information with other hospitals for health care operations purposes. The Privacy Rule prohibits covered entities from disclosing protected health information for the health care operations purposes of other covered entities. As described in section III.A.2 of the preamble regarding Uses and Disclosures for Treatment, Payment, and Health Care Operations, the Department is proposing to modify this restriction and allow covered entities to disclose protected health information for another covered entity's health care operations under some circumstances. However, two conditions on the sharing of individually identifiable information for health care operations may continue to pose a problem. The proposed modifications would condition the sharing on both entities being covered entities and both entities having a relationship with the individual. Hospitals wishing to exchange patient information with each other or with other community health care providers would not satisfy these conditions in all cases.

Many researchers expressed similar concerns, explaining that the Privacy Rule's de-identification safe harbor was so strict that it would result in more research being done on identifiable health information and, thereby, being subject to IRB review than is currently the case. Under the Common Rule, research that uses ''identifiable private information'' must undergo IRB review. However, there is no agreed-upon definition of ''identifiable private information'' and IRBs determine on a case-by-case basis what constitutes ''identifiable private information.'' Consistent with this variability, the comments did not demonstrate consensus on what identifiers should be permitted to be retained for research purposes.

In addition, commenters also expressed concerns with respect to public health reporting. For example, some product manufacturers subject to the jurisdiction of FDA were concerned that they would not be able to operate post-marketing surveillance registries, to which health care providers report problems. Commenters stated that even though they do not need information with direct identifiers, the Privacy Rule's strict de-identification standard would not allow the reporting of useful information into the registry. Additionally, a number of commenters described the de-identification standard as hampering many research and health care operations activities that also serve a public health purpose, *e.g.,* the tracking of the emergence of disease that could be the result of bioterrorism.

The Department also heard from some consumer advocates who supported the elimination of barriers they believe are imposed by the de-identification standard to important medical research. In order to ensure privacy is protected, but at the same time not render impossible research using de-identified information, these commenters recommended that the Department permit the use of information for research that is facially de-identified, *i.e.,* stripped of direct identifiers, so long as the research entity provides assurances that it will not use or disclose the information for purposes other than research and will not identify or contact the individuals who are the subjects of the information.

Solicitation of Comment

The Department is aware of the importance of the activities described by the commenters but is not currently convinced of the need to modify the safe harbor standard for de-identified information. Instead, the Department requests comment on an alternative approach that would permit uses and disclosures of a limited data set which does not include facially identifiable information but in which certain identifiers would remain. The Department is not considering permitting the disclosure of any such limited data set for general purposes, but rather is considering permitting disclosure of such information for research, public health, and health care operations purposes.

The limited data set would not include the following information, which the Department considers direct identifiers: name, street address, telephone and fax numbers, e-mail address, social security number, certificate/license number, vehicle identifiers and serial numbers, URLs and IP addresses, and full face photos and any other comparable images. The limited data set would include the following identifiable information: admission, discharge, and service dates; date of death; age (including age 90 or over); and five-digit zip code. The

Department solicits comment on whether another one or more geographic units smaller than State, such as city, county, precinct, neighborhood or other unit, would be needed in addition to, or be preferable to, five-digit zip code.

In addition, to address concerns raised by commenters regarding access to birth date for research or other studies relating to young children or infants, the Department clarifies that the Privacy Rule does not prohibit age of an individual from being expressed as an age in months, days, or hours. Given that the limited data set would include all ages, including age in months, days, or hours, if preferable, the Department requests comment on whether date of birth is needed and, if so, whether the entire date is needed, or just the month and year.

In addition, to further protect privacy, the Department would propose to condition the disclosure of the limited data set on covered entities obtaining from the recipients a data use or similar agreement, in which the recipient would agree to limit the use of the limited data set to the specified purposes in the Privacy Rule, and limit who can use or receive the data, as well as agree not to re-identify the data or contact the individuals. Commenters seemed to indicate that recipients would be amenable to such conditions.

The Department solicits public comment on the feasibility and acceptability of the above approach for the described purposes, and whether or not the limitations and conditions would be sufficiently protective of patient privacy.

Proposed Modifications

In addition to the solicitation of comment above, the Department proposes a technical modification to the safe harbor provisions. A number of commenters expressed confusion regarding what was believed to be conflicting provisions within the de-identification standard. Commenters argued that, on the one hand, the Privacy Rule treats information as de-identified if all listed identifiers on the information are stripped, including any unique, identifying number, characteristic, or code. Yet, the Privacy Rule permits a covered entity to assign a code or other record identification to the information so that it may be re-identified by the covered entity at some later date.

The Department did not intend the re-identification code to be considered one of the enumerated identifiers. Therefore, the Department proposes to clarify its intent by explicitly excepting the re-identification code or other means of record identification permitted by § 164.514(c) from the listed identifiers at § 164.514(b)(2)(i)(R).

J. Technical Corrections and Other Clarifications

In addition to the modifications described above, the Department proposes to make the following clarifications:

1. Changes of Legal Ownership. The Privacy Rule's definition of health care operations, at §164.501, includes business management and general administrative activities of the entity, including, due diligence in connection with the sale or transfer of assets to a potential successor in interest, if the potential successor in interest is a covered entity or, following completion of the sale or transfer, will become a covered entity.

In the preamble to the Privacy Rule, the Department explained that this language was included to remedy an omission in the 1999 proposed Rule by

> add[ing] to the definition of health care operations disclosures of protected health information for due diligence to a covered entity that is a potential successor in interest. This provision includes disclosures pursuant to the sale of a covered entity's business as a going concern, mergers, acquisitions, consolidations, and other similar types of corporate restructuring between covered entities, including a division of a covered entity, and to an entity that is not a covered entity but will become a covered entity if the reorganization or sale is completed.

65 FR at 82609 (December 28, 2000) (response to comment); *see also* 65 FR at 82491 (similar language); 65 FR at 82652 (''We clarify in the definition of health care operations that a covered entity may sell or transfer its assets, including protected health information, to a successor in interest that is or will become a covered entity.'')

Despite language in the preamble to the contrary, the definition of health care operations in the Privacy Rule does not expressly provide for the transfer of protected health information upon sale or transfer to a successor in interest. Instead, the definition of ''health care operations'' only mentions disclosures of protected health information for ''due diligence'' purposes when a sale or transfer to a successor in interest is contemplated. ''Due diligence'' is generally understood to mean the ''[a] prospective buyer's or broker's investigation and analysis of a target company, a piece of property, or a newly issued security.'' Black's Law Dictionary (7th ed. 1999) *available in* Westlaw, DIBLACK database.

The Department proposes to add language to paragraph (6) of the definition of ''health care operations'' to clarify the intent to permit the transfer of records to a covered entity upon a sale, transfer, merger, or consolidation. This proposed change would prevent the Privacy Rule from interfering with necessary treatment or payment activities upon the sale of a covered entity or its assets.

The Department also proposes to use the terms ''sale, transfer, consolidation or merger'' to eliminate the term ''successor in interest'' from this paragraph. The Department intended this provision to apply to any sale, transfer, merger or consolidation and believes the current language may not sufficiently accomplish this goal. The proposed language's use of the terms ''sale, transfer, merger and consolidation'' is based on language used in model State laws addressing the disclosure of personal or privileged information collected or received in connection with an insurance transaction.

The Department retains the limitation that such disclosures are health care operations only to the extent the entity receiving the protected health information is a covered entity or will become a covered entity as a result of the sale, transfer, merger, or consolidation. In addition, the proposed modification does not affect any responsibility of covered entities either under other law or ethical obligation to notify individuals appropriately of a sale, transfer, merger, or consolidation.

2. Group Health Plan Disclosures of Enrollment and Disenrollment Information to Plan Sponsors. The Department proposes to modify the Privacy Rule to make express the Department's policy, which was explained in the preamble to the Privacy Rule, that group health plans are permitted to share enrollment and disenrollment information with plan sponsors without amending plan documents. Under the Privacy Rule, a group health plan, as well as a health insurance issuer or HMO providing health insurance or health coverage to the group health plan, are covered entities. Neither employers nor other plan sponsors are defined as covered entities. The Department recognizes the legitimate need of the plan sponsor to have access to health information of these covered entities in certain situations. Therefore, the Privacy Rule at § 164.504(f) permits a group health plan, and health insurance issuers or HMOs with respect to the group health plan, to disclose protected health information to the plan sponsor provided that, among other requirements, the plan documents are

amended to appropriately reflect and restrict the plan sponsor's uses and disclosures of such information.

There are two exceptions where the Privacy Rule permits group health plans (or health insurance issuers or HMOs, as appropriate) to disclose information to a plan sponsor without requiring amendment of plan documents. First, § 164.504(f) permits such disclosures when the information needed by the plan sponsor is summary health information. Second, as explained in the preamble to the Privacy Rule, a plan sponsor is permitted to perform enrollment functions on behalf of its employees without meeting the requirements of § 164.504(f), as such functions are considered outside of the plan administration functions. Therefore, a group health plan is also permitted to disclose enrollment or disenrollment information to the plan sponsor without amending the plan documents as required by § 164.504(f).

However, this policy regarding disclosures of enrollment or disenrollment information was addressed only in the preamble to the Privacy Rule and not explicitly in the regulation itself. As a result, the policy seems to have been overlooked and the absence of a specific provision in the regulation itself has caused misinterpretation within industry. To remedy this misunderstanding and make its policy clear, the Department proposes to add an explicit exception at § 164.504(f)(1)(iii) to clarify that group health plans (or health insurance issuers or HMOs, as appropriate) are permitted to disclose enrollment or disenrollment information to a plan sponsor without meeting the plan document amendment and other related requirements.

3. Definition of ''Individually Identifiable Health Information.'' The Department proposes to move the definition of ''individually identifiable health information'' from § 164.501 to § 160.103 to clarify that the definition is relevant to all of the provisions in Parts 160 through 164.

4. Accounting of Disclosures of Protected Health Information. Under the Privacy Rule at § 164.528, individuals have the right to receive an accounting of disclosures of protected health information made by the covered entity, with certain exceptions. These exceptions, or instances where a covered entity is not required to account for disclosures, include disclosures made by the covered entity to carry out treatment, payment, or health care operations, as well as disclosures to individuals of protected health information about them.

The accounting is required to include the following: (1) disclosures of protected health information that occurred during the six years prior to the date of the request for an accounting, including disclosures to or by a business associate of the covered entity; (2) for each disclosure: the date of the disclosure; the name of the entity or person who received the protected health information; if known, the address of such entity or person; a brief description of the protected health information disclosed; and a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or in lieu of such a statement, a copy of the individual's written authorization pursuant to § 164.508 or a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512. For multiple disclosures of protected health information to the same person, the Privacy Rule allows covered entities to provide individuals with an accounting that contains only the following information: (1) For the first disclosure, a full accounting, with the elements described in (2) above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period.

A number of commenters raised concerns that the high costs and administrative burdens associated with the accounting requirements would deter covered entities from disclosing protected health information. In response to these concerns, the Department proposes to expand the exceptions to the standard at § 164.528(a)(1) to include disclosures made pursuant to an authorization as provided in § 164.508. Covered entities would no longer be required to account for any disclosures authorized by the individual in accordance with § 164.508. The Department is proposing to alleviate burden in this way because it is believed that an accounting of disclosures made pursuant to such permissions is unnecessary because such disclosures are already known by the individual, in as much as the individual was required to sign the forms authorizing the disclosures.

Accordingly, the Department proposes to make two conforming amendments at §§ 164.528(b)(2)(iv) and (b)(3) to delete references in the accounting content requirements to disclosures made pursuant to an authorization.

5. Uses and Disclosures Regarding FDA-regulated Products and Activities. The Department recognizes the importance of public health activities and, in the Privacy Rule, allows information to be used and disclosed for these purposes without requiring individual consent or authorization. The recent anthrax attacks and the threat of other forms of bio-terrorism have served to underscore the vital necessity of a strong and effective public health system. The Rule allows covered entities to disclose protected health information to public health authorities for a broad array of public health purposes, including reporting of diseases, injuries, vital statistics, and for the conduct of public health surveillance and interventions. The Rule permits public health reporting to private persons who are contractors for or agents of the public health authority. The Rule also recognizes the essential role of manufacturers and other private persons in carrying out the Food and Drug Administration's (FDA) public health mission.

The Privacy Rule, at § 164.512(b)(1)(iii), specifically permits covered entities to disclose protected health information, without individual authorization, to a person who is subject to the jurisdiction of the FDA for the following specified purposes: (1) To report adverse events, defects or problems, or biological product deviations with respect to products regulated by the FDA (if the disclosure is made to the person required or directed to report such information to the FDA), (2) to track products (if the disclosure is made to the person required or directed to report such information to the FDA), (3) for product recalls, repairs, or replacement, and (4) for conducting post-marketing surveillance to comply with FDA requirements or at the direction of the FDA.

The Department received a number of comments on the provisions for public health activities related to FDA-regulated products. The majority of these commenters were concerned that the Privacy Rule constrains important public health surveillance and reporting activities by impeding the flow of needed information to those subject to the FDA's jurisdiction. In particular, commenters noted that limiting disclosures to those that are ''required or directed'' by FDA does not reflect the breadth of public health activities that are currently being conducted by the private sector on a voluntary basis or under the general auspices of—but not at the direction of—FDA. In general, commenters were concerned that such limitations would stifle current reporting practices. For example, the

FDA currently obtains the vast majority of its information about drugs and devices indirectly from health care providers who voluntarily report known adverse events or problems to the manufacturer of the product. The manufacturer may or may not be required to report such adverse events to FDA. Commenters assert that the present language of the Privacy Rule will have a ''chilling effect'' on these important communications due to uncertainty over the manufacturer's obligation to report to the FDA.

Some concern was expressed about the potential liability of a covered entity for a disclosure to an employee of the manufacturer who is not ''a person subject to the jurisdiction of the FDA'' or to the wrong manufacturer. The Department seeks to assure covered entities that use of the term ''a person'' was not intended to limit reporting to a single individual within an entity, but to allow reporting to flow as it does today between health care providers and representatives of manufacturers or other companies. Moreover, the Department seeks to clarify that covered entities may continue to disclose protected health information to the companies identified on the product labels as the manufacturer registered with the FDA to distribute the product.

To eliminate the ''chilling effect'' of the Rule, some commenters requested that the Department include in the Rule a ''good-faith'' safe harbor to protect covered entities from enforcement actions arising from unintentional violations of the Privacy Rule. For example, a health care provider would not have violated the Rule if the disclosure was made in the good faith belief that the entity to whom the adverse event was reported was responsible for the FDA-regulated product, even if it turned out to be the wrong manufacturer.

Finally, a number of commenters, including some that are subject to the FDA's jurisdiction, suggested that: identifiable health information is not necessary for some or all of these public health reporting purposes; that identifiable health information is not reported to FDA; and that for purposes of post-marketing surveillance, information without direct identifiers (such as name, mailing address, phone number, social security number, and email address) should suffice. The Department recognizes that there must be a balance between the need for public health activities that benefit every individual by safeguarding the effectiveness, safety, and quality of the products regulated by the FDA, and the privacy interests of specific individuals. However, the comments did not offer a consensus as to which activities could be performed without identifiable information or which identifiers, if any, were needed. In Section III.I of this preamble regarding De-identification issues, the Department is soliciting comments on a limited data set for use for specific purposes, including public health. The Department also requests comments as to whether this limited data set should be required or permitted for some or all public health purposes or if a special rule should be developed for public health reporting.

The Department did not intend the Privacy Rule to discourage or prevent the reporting of adverse events or otherwise disrupt the flow of essential information that FDA and persons subject to the jurisdiction of FDA need in order to carry out their important public health activities. Therefore, the Department proposes a number of changes to eliminate uncertainties identified by the commenters, and, thereby, encourage covered entities to continue to report and cooperate in these essential public health activities. The proposed modifications attempt to recognize and preserve current public health activities of persons subject to the jurisdiction of the FDA while not diminishing the health information privacy protections for individuals.

Specifically, the Department proposes to remove from § 164.512(b)(1)(iii)(A) and (B) the phrase ''if the disclosure is made to a person required or directed to report such information to the Food and Drug Administration'' and to remove from subparagraph (D) the phrase ''to comply with requirements or at the direction of the Food and Drug Administration.'' In lieu of this language, HHS proposes to describe at the outset the public health purposes for which disclosures may be made. The proposed language reads: ''A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity.''

The Department proposes to retain the listing of specific activities identified in paragraphs (A), (B), (C), and (D), to give covered entities additional assurance that public health disclosures for these activities are permissible under the Privacy Rule. The listing, however, is no longer an exclusive list of FDA-related public health activities, but rather is a list of examples of the most common activities. Additionally, language has been added to paragraph (C) to include ''lookback'' activities which are necessary for tracking blood and plasma products, as well as quarantining tainted blood or plasma and notifying recipients of such tainted products.

The privacy of individuals' health information would continue to be protected through the limitations placed on the permissible disclosures for FDA purposes. Specifically, such disclosures must relate to FDA-regulated products or activities for which the person using or receiving the information has responsibility, and for activities related to the safety, effectiveness, or quality of such FDA-regulated product or activity.

The Department is not proposing a good-faith safe harbor at this time because it believes that these proposed modifications will adequately address the concerns and uncertainties facing covered entities. However, the Department is interested in hearing from affected parties as to whether the proposed modifications are adequate or if additional measures are necessary for health care providers or others to continue to report this vital information about FDA-regulated products or activities.

6. Hybrid Entities. The Privacy Rule defines covered entities that primarily engage in activities that are not covered functions—i.e., functions that relate to the entity's operation as a health plan, health care provider, or health care clearinghouse—as hybrid entities. See § 164.504(a). In order to limit the burden on such entities, most of the requirements of the Privacy Rule only apply to the health care component(s) of the hybrid entity and not to the parts of the entity that do not engage in covered functions. The health care component(s) include those components of the entity that perform covered functions and other components of the entity that support those covered functions, in the same way such support may be provided by a business associate. A covered entity that is a hybrid entity is required to define and designate those parts of the entity that engage in the covered functions and ''business associate'' functions and that are, therefore, part of the health care component(s). The health care component is designed to include components that engage in ''business associate'' functions because it is impossible for the entity to contract with itself and the authorization requirement would limit the ability to engage in necessary health care operations functions.

The hybrid entity is also required to create adequate separation (i.e., fire walls) between the health care component(s) and other components of

the entity. Transfer of protected health information held by the health care component to other components of the hybrid entity is a disclosure under the Privacy Rule and is only allowed to the same extent as such disclosure would be permitted to a separate entity.

Examples of hybrid entities are: (1) corporations that are not in the health care industry, but that operate on-site health clinics, and (2) insurance carriers that have multiple lines of business which include both health insurance and other insurance lines such as general liability or property and casualty insurance.

A ''hybrid entity'' is defined in the Privacy Rule as an entity ''whose covered functions are not its *primary* functions.'' (emphasis added). In the preamble to the Privacy Rule, the Department explained that the use of the term ''primary'' in the definition of a ''hybrid entity'' was not intended to operate with mathematical precision. The Department intended a common sense evaluation of whether the covered entity mostly operates as a health plan, health care provider, or health care clearinghouse. If an entity's primary activity was engaging in covered functions, then the whole entity would be a covered entity and the hybrid entity provisions would not apply. However, if the covered entity primarily conducted non-health activities, it would qualify as a hybrid entity and would be required to comply with the Privacy Rule with respect to its health care component(s). Commenters expressed concern that the policy guidance in the preamble was insufficient as long as the Privacy Rule itself limited the hybrid entity provisions to entities that primarily conducted non-health related activities. There were particular concerns in cases in which the health plan line of business was the primary business, and the line of business that is one of the excepted benefits, *e.g.,* workers' compensation insurance, was only a small portion of the business. There were also concerns about what ''primary'' meant if not a mathematical calculation and how the entity would know whether or not it was a hybrid entity based on the guidance in the preamble.

As a result of these comments, the Department proposes to delete the term ''primary'' from the definition of ''hybrid entity'' in § 164.504(a). In order to avoid the problem of line drawing, the Department proposes to permit any covered entity to be a hybrid entity if it is a single legal entity that performs both covered and non-covered functions, regardless of whether the non-covered functions represent that entity's primary function, a substantial function, or even a small portion of the entity's activities.

The Department proposes to permit covered entities that could qualify as hybrid entities to choose whether or not they want to be hybrid entities. Elimination of the requirement in the definition of ''hybrid entity'' that covered functions not be the ''primary'' functions of the covered entity would greatly increase the proportion of covered entities that are hybrid entities. In order to avoid the burden of requiring many more covered entities to designate the health care components and create fire walls within their entity when it is administratively simpler to treat the entire entity as a covered entity, the proposal would allow the covered entity to choose whether it will be a hybrid entity or not. To accomplish this objective, the proposed definition of ''hybrid entity'' would require that in order to be a hybrid entity, a covered entity that otherwise qualifies must designate health care components. If a covered entity does not designate health care components, the entire entity would be a covered entity.

There are advantages and disadvantages to being a hybrid entity. Whether or not the advantages outweigh the disadvantages will be a decision of each covered entity that may qualify as a hybrid entity and will be influenced by factors such as how the entity is organized and the proportion of the entity that must be included in the health care component. Where the non-covered functions of the entity are only a small portion of the entity, it will likely be more efficient to simply consider the entire entity as a covered entity. Nonetheless, the Department is proposing to permit flexibility for covered entities to choose whether or not to be treated as a covered entity entirely or as a hybrid entity.

The Department also proposes to simplify the definition of ''health care component'' in § 164.504(a) to make clear that a health care component is whatever the covered entity designates as the health care component, consistent with the provisions regarding designation in § 164.504(c)(3)(iii). The specific language regarding which components make up a health care component would be in the implementation specification that addresses designation of health care components. The Department proposes to move this specific language because it provides requirements and directions that are more appropriately placed in an implementation specification. The Department proposes that health care components may include: (1) Components of the covered entity that engage in covered functions, and (2) any component that engages in activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

With respect to the components that perform covered functions, the Department also clarifies that a hybrid entity must include in its health care component(s) any component that would meet the definition of ''covered entity'' if it were a separate legal entity. ''Covered functions'' are those functions of a covered entity that make the entity a health plan, health care provider, or health care clearinghouse. However, there was some ambiguity as to whether a component of a covered entity that is a health care provider, but that does not conduct standard electronic transactions, must be included in the health care component. The proposed language would clarify that any component that would be a covered entity if it were a separate legal entity must be included in the health care component.

Under these proposed changes, a component that is a health care provider and that engages in standard electronic transactions must be included in the health care component, but a component that is a health care provider but that does not engage in standard electronic transactions may, but would not be required to, be included in the health care component of the hybrid entity. The decision would be left to the covered entity in the second case. For example, in a university setting, the single legal entity may operate hospital facilities that bill electronically and research laboratories that do not engage in any electronic billing. The modification would clarify that the university as a hybrid entity need only include the hospital facilities that bill electronically in the health care component. The modification also would make clear that the university has the option to include the components, such as the research laboratory, that function as a health care provider, but not as a covered health care provider. A covered entity that chooses to include a non-covered health care provider in their health care component would be required to ensure that the non-covered health care provider, as well as the rest of the health care component, is in compliance with the Privacy Rule.

There is also a conforming change in the proposed language in § 164.504(c)(1)(ii) to make it clear that a reference to a ''covered health care provider'' in the Privacy Rule could

include the functions of a health care provider who does not engage in electronic transactions, if the covered entity chooses to include such functions in the health care component.

With respect to the language regarding components that engage in ''business associate'' functions, the Department does not make any substantive change. The components of a hybrid that may provide services to the component that performs covered functions, such as a portion of the legal or accounting departments of the entity, may be included in the health care component so protected health information can be shared with such components of the entity without requiring business associate agreements or individual authorizations. The related language in paragraph (2)(ii) of the definition of ''health care component'' in the Privacy Rule that requires the ''business associate'' functions include the use of protected health information is not included in this proposed Rule because it is redundant.

It is important to note that a covered entity may include components that engage in ''business associate'' functions in its health care component or not. It is not a violation of the Privacy Rule to fail to include such a component in the health care component designation. However, a disclosure of protected health information from the health care component to such other component if it is not part of the health care component is the same as a disclosure outside the covered entity and is a violation unless it is permitted by the Privacy Rule. Because an entity cannot have a business associate contract with itself, such a disclosure likely would require individual authorization.

Finally, to avoid needless application of the hybrid entity provisions to a covered entity's activities as an employer, rather than as a health plan, health care provider, or health care clearinghouse, the Department proposes to modify the definition of ''protected health information'' in § 164.501. The preamble to the Privacy Rule makes clear that the Privacy Rule does not treat employment records as protected health information. To avoid any confusion or misinterpretation on this point, the Department proposes to expressly exclude employment records held by a covered entity in its role as employer from the definition of ''protected health information.'' In that way, employment records will be treated in the same manner as student medical records covered by FERPA, which the Privacy Rule excludes from the definition of ''protected health information.'' This change will limit the need for a covered entity, whose primary activities are covered functions, to designate itself as a hybrid entity simply to carve out employment records.

It is important to note that the exception from the definition of ''protected health information'' for employment records only applies to individually identifiable health information in those records that are held by a covered entity in its role as employer. The exception does not apply to individually identifiable health information held by a covered entity when carrying out its health plan or health care provider functions. Such information would be protected health information. The Department specifically is soliciting comments on whether the term ''employment records'' is clear or whether it needs to be more fully explained. It would be particularly helpful if commenters could identify certain types of records that should be included or excluded from ''employment records.''

7. Technical Corrections. The Privacy Rule contained some technical and typographical errors. Therefore, the Department proposes to make the following corrections:

a. In § 160.102(b), beginning in the second line, ''section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191),'' is replaced with ''42 U.S.C. 1320a–7c(a)(5)''.

b. In § 160.203(b), in the second line, ''health information'' is replaced with ''individually identifiable health information''.

c. In § 164.102, ''implementation standards'' is corrected to read ''implementation specifications.''

d. In § 164.501, in the definition of ''protected health information'', ''Family Educational Right and Privacy Act'' is corrected to read ''Family Educational Rights and Privacy Act.''

e. In § 164.508(b)(1)(ii), in the fifth line, the word ''be'' is deleted.

f. In § 164.508(b)(3)(iii), a comma is added after the words ''psychotherapy notes''.

g. In § 164.510(b)(3), in the third line, the word ''for'' is deleted.

h. In § 164.512(b)(1)(v)(A), in the fourth line, the word ''a'' is deleted.

i. In § 164.512(b)(1)(v)(C), in the eighth line, the word ''and'' is added after the semicolon.

j. In § 164.512(f)(3), paragraphs (ii) and (iii) are redesignated as (i) and (ii), respectively.

k. In § 164.512(g)(2), in the seventh line, the word ''to'' is added after the word ''directors.''

l. In § 164.512(i)(1)(iii)(A), in the second line, the word ''is'' after the word ''sought'' is deleted.

m. In § 164.522(a)(1)(v), in the sixth line, ''§§ 164.502(a)(2)(i)'' is corrected to read ''§§ 164.502(a)(2)(ii)''.

n. In § 164.530(i)(4)(ii)(A), in the second line, ''the requirements'' is replaced with the word ''specifications''.

IV. Preliminary Regulatory Impact Analysis

Federal law (5 U.S.C. 804(2), as added by section 251 of Pub. L. 104–21), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects in competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

The impact of the modifications proposed in this rulemaking would be a net reduction of costs associated with the Privacy Rule of approximately $100 million. Therefore, this Rule is a major rule as defined in 5 U.S.C. 804(2).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. The purpose of the regulatory impact analysis is to assist decision-makers in understanding the potential ramifications of a regulation as it is being developed. The analysis is also intended to assist the public in understanding the general economic ramifications of the regulatory changes.

The Privacy Rule included a regulatory impact analysis (RIA), which estimated the cost of the Privacy Rule at $17.6 billion over ten years. 65 FR 82462, 82758. The changes to the Privacy Rule proposed by this notice of proposed rulemaking are a result of comment by the industry and the public at large identifying a number of unintended consequences of the Privacy

Rule that could adversely affect access to, or the quality of health care delivery. These proposed changes should facilitate implementation and compliance with the Privacy Rule, and lower the costs and burdens associated with the Privacy Rule while maintaining the confidentiality of protected health information.

The proposed changes would affect five areas of the Privacy Rule that will have an economic impact: (1) Consent; (2) notice; (3) marketing; (4) research; and (5) business associates. In addition, the proposal contains a number of changes that, though important, can be categorized as clarifications of intended policy. For example, the modifications would permit certain uses and disclosures of protected health information that are incidental to an otherwise permitted use or disclosure. This change would recognize such practices as the need for physicians to talk to patients in semi-private hospital rooms or nurses to communicate with others in public areas, and avoids the costs covered entities might have incurred to reconfigure facilities as necessary to ensure absolute privacy for these common treatment-related communications. This and other modifications in this proposal (other than those described below) clarify the intent of the standards in the Privacy Rule and, as such, do not change or alter the associated costs that were estimated for the Privacy Rule. There are no new costs or savings by these changes, and therefore, there is no cost estimate made here for them.

A. Summary of Costs and Benefits in Final Regulatory Impact Statement

The Privacy Rule was estimated to produce net costs of $17.6 billion, with net present value costs of $11.8 billion (2003 dollars) over ten years (2003–2012). The Department estimates the modifications in this proposal would lower the net cost of the Privacy Rule by approximately $100 million over ten years.

Measuring both the economic costs and benefits of health information privacy was recognized as a difficult task. The paucity of data and incomplete information on current industry privacy and information system practices made cost estimation a challenge. Benefits were difficult to measure because they are, for the most part, inherently intangible. Therefore, the regulatory impact analysis in the Privacy Rule focused on the key policy areas addressed by the privacy standards, some of which would be affected by the proposed modifications in this rulemaking.

B. Proposed Modifications To Prevent Barriers to Access to or Quality of Health Care

The changes proposed in this rulemaking are intended to address the possible adverse effects of the final privacy standards on an individual's access to, or the quality of, health care. The modifications touch on five of the key policy areas addressed by the final regulatory impact analysis, including consent, research, marketing, notice, and business associates.

Consent

Under the Privacy Rule, a covered health care provider with a direct treatment relationship with an individual must obtain the individual's prior written consent for use or disclosure of protected health information for treatment, payment, or health care operations, subject to a limited number of exceptions. Other covered health care providers and health plans may obtain such a consent if they so choose. The initial cost of the consent requirement was estimated to be $42 million. Based on assumptions for growth in the number of patients, the total costs for ten years was estimated to be $103 million. *See* 65 FR 82771 (December 28, 2000).[2]

The proposed modifications would eliminate the consent requirement. The consent requirement posed many difficulties for an individual's access to health care, and was problematic for operations essential for the quality of the health care delivery system. However, any health care provider or health plan may choose to obtain an individual's consent for treatment, payment, and health care operations. The elimination of the consent requirement reduces the initial cost of the privacy standards by $42 million in the first year and by $103 million over ten years.

As explained in detail in section III.A.1. above, many comments that the Department received in March 2001 and testimony before the NCVHS revealed that the consent requirements in the Privacy Rule create unintended barriers to timely provision of care, particularly with respect to use and disclosure of health information prior to a health care provider's first face-to-face contact with the individual. These and other barriers discussed above would have entailed costs not anticipated in the economic analyses in the Privacy Rule. These comments also revealed that the consent requirements create administrative burdens, for example, with respect to tracking the status and revocation of consents, that were not foreseen and thus not included in that economic analysis. Therefore, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

Notice

In eliminating the consent requirement, the Department proposes to preserve the opportunity for a covered health care provider with a direct treatment relationship with an individual to engage in a meaningful communication about the provider's privacy practices and the individual's rights by strengthening the notice requirements. Under the Privacy Rule, these health care providers are required to distribute to individuals their notice of privacy practices no later than the date of the first service delivery after the compliance date. The modifications would not change this distribution requirement, but would add a new documentation requirement. A covered health care provider with a direct treatment relationship would be required to make a good faith effort to obtain the individual's acknowledgment of receipt of the notice provided at the first service delivery. The form of the acknowledgment is not prescribed and can be as unintrusive as retaining a copy of the notice initialed by the individual. If the provider's good faith effort fails, documentation of the attempt is all that would be required. Since the modification would not require any change in the form of the notice or its distribution, the ten-year cost estimate of $391 million for these areas in the Privacy Rule's impact analysis remains the same. *See* 65 FR 82770 (December 28, 2000).

However, the additional effort by direct treatment providers in obtaining and documenting the individual's acknowledgment of receipt of the notice would add costs. This new requirement would attach only to the initial provision of notice by a direct treatment provider to an individual after the compliance date. Under the proposed modification, providers would have considerable flexibility on how to achieve this. Some providers could

[2] The total cost for consent in the regulatory impact analysis showed an initial cost of $166 million and $227 million over ten years. Included in these total numbers is the cost of tracking patient requests to restrict the disclosure of their health information. This right is not changed in these modifications. The numbers here represent the costs associated with the consent functions that are proposed to be repealed.

choose to obtain the required written acknowledgment on a separate piece of paper, while others could take different approaches, such as an initialed check-off sheet or a signature line on the notice itself with the provider keeping a copy.

In the original analysis, the Department estimated that the consent cost would be $0.05 per page based on the fact that the consent had to be a stand alone document requiring a signature. This proposed modification to the notice requirement would provide greater flexibility and, therefore, greater opportunity to reduce costs compared to the consent requirement. The Department estimates that the additional cost of the signature requirement, on average, would be $0.03 per notice. Based on data obtained from the Medical Expenditure Panel Survey (MEPS), which estimate the number of patient visits in a year, the Department estimates that in the first year there would be 816 million notices distributed, including the new additional information needed to acknowledge receipt of the notice. Over the next nine years, the Department estimates, again based on MEPS data, that there would be 5.3 billion visits to health care providers by new patients (established patients will not need to receive another copy of the notice). At $0.03 per document, the first year cost would be $24 million and the total cost over ten years would be $184 million.

Business Associates

The Privacy Rule requires a covered entity to have a written contract, or other arrangement that documents satisfactory assurances that a business associate will appropriately safeguard protected health information in order to disclose protected health information to the business associate. The regulatory impact analysis for the Privacy Rule provided cost estimates for two aspects of this requirement. In the Privacy Rule, $103 million in first-year costs was estimated for development of a standard business associate contract language. (There were additional costs associated with these requirements related to the technical implementation of new data transfer protocols, but these are not affected by the changes being proposed here.) In addition, $197 million in first-year costs and $697 million in total costs over ten years were estimated in the Privacy Rule for the review and oversight of existing business associate contracts.

The modifications do not change the standards for business associate contracts or the implementation specifications with respect to the covered entity's responsibilities for managing the contracts. However, as part of this proposal, the Department is including model business associate contract language. This model is only suggested language and is not a complete contract. The model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties. The final regulatory impact analysis assumed the development of such standard language by trade and professional associations. While this has, in fact, been occurring, the Department continues to receive requests for model contract language, particularly from small health care providers. The Department expects that trade and professional associations will continue to provide assistance to their members. However, the model contract language in this proposal will simplify their efforts by providing a base from which they can develop language. The Department had estimated $103 million in initial year costs for this activity based on the assumption it would require one hour per non-hospital provider and two hours for hospitals and health plans to develop contract language and to tailor the language to the particular needs of the covered entity. The additional time for hospitals and health plans reflected the likelihood that these covered entities would have a more extensive number of business associate relationships. Because there will be less effort expended than originally estimated in the Privacy Rule, the Department estimates a reduction in contract development time by one-third because of the availability of the model language. Thus, the Department now estimates that this activity will take 40 minutes for non-hospital providers and 80 minutes for hospitals and health plans. The Department estimates that the savings from the proposed business associate contract language would be approximately $35 million in the first year.

The Department is also proposing in this rulemaking to give covered entities additional time to review their existing business associate contracts and to conform written contracts to the privacy standards. Under the proposal, a covered entity's written business associate contracts, existing at the time the modifications become effective, would be deemed to comply with the privacy standards until such time as the contracts are renewed or modified or until April 14, 2004, whichever is earlier. The effect of this proposal would be to spread first year costs over an additional year, with a corresponding postponement of the costs estimated for the out years. However, the Department has no reliable information as to the number of contracts potentially affected by the modification or how long a delay may occur. Therefore, the Department does not compute any cost savings to this modification.

Marketing

Under § 164.514(e) of the Privacy Rule, certain health-related communications are subject to special conditions on marketing communications, if they also serve to promote the use or sale of a product or service. These marketing conditions require that particular disclosures be made as part of the marketing materials sent to individuals. Absent these disclosures, protected health information can only be used or disclosed in connection with such marketing communications with the individual's authorization. The Department is aware that the Privacy Rule's § 164.514(e) conditions for health-related communications create a potential burden on covered entities to make difficult assessments regarding many of their communications. The proposed modifications to the marketing provisions would relieve the burden on covered entities by making most marketing subject to an authorization requirement and eliminating the § 164.514(e) conditions on marketing communications.

In developing the final impact analysis for the Privacy Rule, the Department was unable to estimate the cost of the marketing provisions. There was too little data and too much variation in current practice to estimate how the Privacy Rule might affect marketing. The same remains true today. However, the proposed modifications would relieve burden on the covered entities in making communications for treatment and certain health care operations relative to the requirements in the Privacy Rule. Although the Department cannot provide a quantifiable estimate, the effect of these proposed changes will be to lower costs relative to the Privacy Rule.

Research

In the final impact analysis for the Privacy Rule, the Department estimated the total cost of the provisions requiring documentation of an Institutional Review Board (IRB) or Privacy Board waiver of individual authorization for the use or disclosure of protected health information for a research purpose as $40 million for the first year and $585

million for the ten-year period. The costs were estimated based on the time that an IRB or privacy board would need to consider a request for a waiver under the criteria provided in the Privacy Rule. See 65 FR 82770–82771 (December 28, 2000).

The proposed modification would simplify and reduce the number of criteria required for an IRB or Privacy Board to approve a waiver of authorization in three ways. First, the proposal would simplify the criteria for waivers to better conform to the Common Rule's waiver criteria for informed consent to participate in the research study. Second, the proposal would simplify the accounting procedures for research by eliminating the need to account for disclosures based on individual authorization. Third, the proposal would simplify the authorization process for research to facilitate the combining of the informed consent for participation in the research itself with all authorizations required under the Privacy Rule. Therefore, the Department estimates that the net effect of these modifications would be to reduce the time necessary to assemble the necessary waivers and for an IRB or Privacy Board to consider and act on waiver requests by one quarter. The Department estimates these simplifications would reduce the expected costs first year costs by $10 million and the ten year costs by $146 million, relative to the Privacy Rule. Since this initial estimate is based on limited information available to the Department, the Department requests information to better assess this cost savings.

PRIVACY RULE MODIFICATIONS—TEN-YEAR COST ESTIMATES

Policy	Original Cost	Modification	Change due to modification
Consent	$103 million	Provision removed	−$103 million.[1]
Notice	$391 million	Good faith effort to obtain acknowledgment of receipt .	+$184 million.
Marketing	Not scored due to lack of data .	Fewer activities constitute marketing .	Reduction in cost but magnitude cannot be estimated.
Business Associates	$103 million for contract modifications .	Model language provided	−$35 million.
Research	$585 million	Waiver requirements simplified .	−$146 million.
Net Change			−$100 million.

[1] As noted above in the discussion on consent, while the estimated costs of the consent provisions were $103 million, comments have suggested that the costs were likely to be much higher. If these comments are accurate, the cost savings associated with retracting the consent provisions would, therefore, also be significantly higher than $103 million.

C. Costs to the Federal Government

The proposed changes in this Rule will result in small savings to the federal government relative to the costs that would have occurred under the Privacy Rule. Although there will be some increase in costs for the new requirements for obtaining acknowledgment for receipt of the notice, these costs are partially offset by the savings in the elimination of the consent. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. The Department does not believe the federal government engages in significant marketing as defined in the Privacy Rule. The federal government will have business associates under the Privacy Rule, and therefore, the model language proposed in this rulemaking will be of benefit to federal departments and agencies. The Department has not estimated the federal government's portion of the $35 million savings it estimated for this change. Similarly, the federal government, which conducts and sponsors a significant amount of research that is subject to IRBs, will realize some savings as a result of the research modifications proposed in this rulemaking. The Department does not have sufficient information, however, to estimate the federal government's portion of the total $146 million savings with respect to research modifications.

D. Costs to State and Local Government

The proposed changes also may affect the costs to state and local governments. However, these effects likely will be small. As with the federal government, state and local governments will have any costs of the additional notice requirement offset by the savings realized by the elimination of the consent requirement. As discussed above, to the extent comments are accurate that the costs for the consent provisions are much higher than estimated, the cost savings associated with the retraction of these provisions would, therefore, be significantly higher. State and local governments could realize savings from the model language for business associates and the changes in research, but the savings are likely to be small. The Department does not have sufficient information to estimate the state and local government's share of the net savings from the proposed changes.

E. Benefits

The benefits of these modifications would be lower costs, and enhanced implementation and compliance with the Privacy Rule without compromising the protection of individually identifiable health information or access to quality health care.

F. Alternatives

In July 2001, the Department clarified the Privacy Rule in guidance, where feasible, to resolve some of the issues raised by commenters. Issues that could not adequately be addressed through guidance because of the need for a regulatory change are addressed in this proposed Rule. The Department examined a number of alternatives to these proposed provisions. One alternative was to not make any changes to the Privacy Rule, but this option was rejected for the reasons explained throughout the preamble. The Department also considered various alternatives to specific provisions in the development of this proposed Rule. These alternatives are generally discussed above, where appropriate.

V. Preliminary Regulatory Flexibility Analysis

The Department also examined the impact of this proposed Rule as required

by the Small Business Regulatory Enforcement and Fairness Act (SBREFA) (5 U.S.C. 601, *et seq.*). SBREFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities.

The law does not define the thresholds to use in implementing the law and the Small Business Administration discourages establishing quantitative criteria. However, the Department has long used two criteria—the number of entities affected and the impact on revenue and costs—for assessing whether a regulatory flexibility analysis is necessary. Department guidelines state that an impact of three to five percent should be considered a significant economic impact. Based on these criteria, the Department has determined that a regulatory flexibility analysis is not required.

As described in the Regulatory Flexibility Analysis for the Privacy Rule, most covered entities are small businesses—approximately 465,000. *See* Table A, 65 FR 82780 (December 28, 2000). Lessening the burden for small entities, consistent with the intent of protecting privacy, was an important consideration in developing these modifications. However, as discussed in the Preliminary Regulatory Impact Analysis, above, the net affect of the proposed changes is an overall savings of approximately $100 million over ten years. Even if all of this savings were to accrue to small entities (an over estimation), the impact per small entity would be de minimis.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, the Department is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agency.
- The accuracy of the estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In accordance with these requirements, the Department is soliciting public comments on the model business associate contract language displayed in the Appendix to this proposed Rule. The Department provides these model business associate contract provisions in response to numerous requests for guidance. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. Nor is the model language a complete contract. Rather, the model language is designed to be adapted to the business arrangement between the covered entity and the business associate and to be incorporated into a contract drafted by the parties.

Section 164.506—Consent for Treatment, Payment, and Health Care Operations

Under the Privacy Rule, a covered health care provider that has a direct treatment relationship with individuals must, except in certain circumstances, obtain an individual's consent to use or disclose protected health information to carry out treatment, payment, and health care operations. The modifications would eliminate this requirement. While the consent requirement is subject to the PRA, the Department believes that the burden associated with the requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2). Therefore, the modification does not affect the paperwork burden associated with the Privacy Rule.

Section 164.520—Notice of Privacy Practices for Protected Health Information

The modifications would impose a good faith effort on direct treatment providers to obtain an individual's acknowledgment of receipt of the notice of privacy practices for protected health information and to document such acknowledgment or, in the absence of such acknowledgment, the entity's good faith efforts to obtain it. In addition, a covered entity would have to retain the acknowledgment or documentation of the good faith effort as required by § 164.530(j). The Department is continuing to work on estimating the burden imposed by the Privacy Rule. The estimate for the acknowledgment of receipt of the notice will be reflected in the paperwork reduction package to be submitted to OMB as required by the PRA.

The Department has submitted a copy of this proposed Rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Center for Medicaid and Medicare Services, Information Technology Investment Management Group, Division of CMS Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. ATTN: John Burke, HIPAA Privacy;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Allison Herron Eydt, CMS Desk Officer.

VII. Unfunded Mandates

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 by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million in a single year. A final cost-benefit analysis was published in the Privacy Rule of December 28, 2000 (65 FR 82462, 82794). In developing the final Privacy Rule, the Department adopted the least burdensome alternatives, consistent with achieving the Rule's goals. The Department does not believe that the modifications in the proposed Rule would qualify as an unfunded mandate under the statute.

VIII. Environmental Impact

The Department has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Executive Order 13132: Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent Privacy Rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The federalism implications of the Privacy Rule were assessed as required by Executive Order 13132 and published in the Privacy Rule of

December 28, 2000 (65 FR 82462, 82797). The proposed change with the most direct effect on federalism principles concerns the clarifications regarding the rights of parents and minors under State law. The modifications would make clear the intent of the Department to defer to State law with respect to such rights. Therefore, the Department believes that the modifications in this proposed Rule would not significantly affect the rights, roles and responsibilities of States.

Appendix to the Preamble—Model Business Associate Contract Provisions

Introduction

The Department of Health and Human Services provides these model business associate contract provisions in response to numerous requests for guidance. This is only model language. These provisions are designed to help covered entities more easily comply with the business associate contract requirements of the Privacy Rule. However, use of these model provisions is not required for compliance with the Privacy Rule. The language may be amended to more accurately reflect business arrangements between the covered entity and the business associate.

These or similar provisions may be incorporated into an agreement for the provision of services between the entities or they may be incorporated into a separate business associate agreement. These provisions only address concepts and requirements set forth in the Privacy Rule and alone are not sufficient to result in a binding contract under State law and do not include many formalities and substantive provisions that are required or typically included in a valid contract. Reliance on this model is not sufficient for compliance with state law and does not replace consultation with a lawyer or negotiations between the parties to the contract.

Furthermore, a covered entity may want to include other provisions that are related to the Privacy Rule but that are not required by the Privacy Rule. For example, a covered entity may want to add provisions in a business associate contract in order for the covered entity to be able to rely on the business associate to help the covered entity meet its obligations under the Privacy Rule. In addition, there may be permissible uses or disclosures by a business associate that are not specifically addressed in these model provisions. For example, the Privacy Rule does not preclude a business associate from disclosing protected health information to report unlawful conduct in accordance with § 164.502(j). However, there is not a specific model provision related to this permissive disclosure. These and other types of issues will need to be worked out between the parties.

Model Business Associate Contract Provisions [1]

Definitions (alternative approaches)

Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

Examples of specific definitions:

(a) *Business Associate.* ''Business Associate'' shall mean [Insert Name of Business Associate].

(b) *Covered Entity.* ''Covered Entity'' shall mean [Insert Name of Covered Entity].

(c) *Individual.* ''Individual'' shall have the same meaning as the term ''individual'' in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(d) *Privacy Rule.* ''Privacy Rule'' shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(e) *Protected Health Information.* ''Protected Health Information'' shall have the same meaning as the term ''protected health information'' in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(f) *Required By Law.* ''Required By Law'' shall have the same meaning as the term ''required by law'' in 45 CFR 164.501.

(g) *Secretary.* ''Secretary'' shall mean the Secretary of the Department of Health and Human Services or his designee.

Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement. [This provision may be included if it is appropriate for the Covered Entity to pass on its duty to mitigate damages by a Business Associate.]

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. [Not necessary if business associate does not have protected health information in a designated record set.]

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. [Not necessary if business associate does not have protected health information in a designated record set.]

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with Section [Insert Section Number in Contract Where Provision (i) Appears] of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions (alternative approaches)

Specify purposes:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by Covered Entity: [List Purposes].

Refer to underlying services agreement:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

[1] Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these model provisions and are not intended to be included in the contractual provisions.

Specific Use and Disclosure Provisions [only necessary if parties wish to allow Business Associate to engage in such activities]

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

Obligations of Covered Entity

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions [provisions dependent on business arrangement]

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. [Include an exception if the Business Associate will use or disclose protected health information for, and the contract includes provisions for, data aggregation or management and administrative activities of Business Associate].

Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate this Agreement [and the ____ Agreement/sections ____ of the ____ Agreement] if Business Associate has breached a material term of this Agreement and cure is not possible. [Bracketed language in this provision may be necessary if there is an underlying services agreement. Also, opportunity to cure is permitted, but not required by the Privacy Rule.]

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104–191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section [Insert Section Number Related to ''Effect of Termination''] of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

List of Subjects

45 CFR Part 160

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

45 CFR Part 164

Electronic transactions, Employer benefit plan, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Privacy, Reporting and record keeping requirements.

Dated: March 12, 2002.

Tommy G. Thompson,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend 45 CFR Subtitle A, Subchapter C, as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 160 continues to read as follows:

Authority: Sec. 1171 through 1179 of the Social Security Act, (42 U.S.C. 1320d–1329d–8) as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031 and sec. 264 of Pub. L. 104–191 (42 U.S.C. 1320d–2(note)).

§ 160.102 [Amended]

2. Amend § 160.102(b), by removing the phrase ''section 201(a)(5) of the Health Insurance Portability Act of 1996, (Pub. L. 104–191)'' and adding in its place the phrase ''the Social Security Act, 42 U.S.C. 1320a–7c(a)(5)''.

3. In § 160.103 add the definition of ''individually identifiable health information'' in alphabetical order to read as follows:

§ 160.103 Definitions.

* * * * *

Individually identifiable health information is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or

(ii) With respect to which there is a reasonable basis to believe the

information can be used to identify the individual.

* * * * *

4. In § 160.202 revise paragraphs (2) and (4) of the definition of ''more stringent'' to read as follows:

§ 160.202 Definitions.

* * * * *

More stringent means * * *

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

* * * * *

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

* * * * *

§ 160.203 [Amended]

5. Amend § 160.203(b) by adding the words ''individually identifiable'' before the word ''health''.

PART 164—SECURITY AND PRIVACY

Subpart E—Privacy of Individually Identifiable Health Information

1. The authority citation for part 164 continues to read as follows:

Authority: 42 U.S.C. 1320d–2 and 1320d–4, sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(note)).

§ 164.102 [Amended]

2. Amend § 164.102 by removing the words ''implementation standards'' and adding in its place the words ''implementation specifications.''

§ 164.500 [Amended]

3. In § 164.500, remove ''consent,'' from paragraph (b)(1)(v).

§ 164.501 [Amended]

4. Amend § 164.501 as follows:

a. In the definition of ''health care operations'' remove from the introductory text of the definition '', and any of the following activities of an organized health care arrangement in which the covered entity participates'' and revise paragraphs (6)(iv) and (v).

b. Remove the definition of ''individually identifiable health information''.

c. Revise the definition of ''marketing''.

d. In paragraph (1)(ii) of the definition of ''payment,'' remove the word ''covered''.

e. Revise paragraph (2) of the definition of ''protected health information''.

The revisions read as follows:

§ 164.501 Definitions.

* * * * *

Health care operations means * * *

(6) * * *

(iv) The sale, transfer, merger, or consolidation of all or part of a covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and

(v) Consistent with the applicable requirements of § 164.514, creating de-identified health information and fundraising for the benefit of the covered entity.

* * * * *

Marketing means to make a communication about a product or service to encourage recipients of the communication to purchase or use the product or service. *Marketing* excludes a communication made to an individual:

(1) To describe the entities participating in a health care provider network or health plan network, or to describe if, and the extent to which, a product or services (or payment for such product or service) is provided by a covered entity or included in a plan of benefits;

(2) For treatment of that individual; or

(3) For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.

* * * * *

Protected health information means * * *

(2) *Protected health information* excludes individually identifiable health information in:

(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;

(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and

(iii) Employment records held by a covered entity in its role as employer.

* * * * *

5. Amend § 164.502 as follows:

a. Revise paragraphs (a)(1)(ii), (iii), and (vi).

b. Revise paragraph (b)(2)(ii).

c. Redesignate paragraphs (b)(2)(iii) through (v) as paragraphs (b)(2)(iv) through (vi).

d. Add a new paragraph (b)(2)(iii).

e. Redesignate paragraphs (g)(3)(i) through (iii) as (g)(3)(i)(A) through (C) and redesignate paragraph (g)(3) as (g)(3)(i).

f. Add new paragraphs (g)(3)(ii) and (iii).

The revisions and additions read as follows:

§ 164.502 Uses and disclosures of protected health information: general rules.

(a) *Standard.* * * *

(1) *Permitted uses and disclosures.* * * *

(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;

(iii) As incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required uses or disclosures;

* * * * *

(vi) As permitted by and in compliance with this section, § 164.512, or § 164.514(f) and (g).

* * * * *

(b) *Standard: Minimum necessary.* * * *

(2) *Minimum necessary does not apply.* * * *

(ii) Uses or disclosures made to the individual, as permitted under paragraph (a)(1)(i) of this section or as required by paragraph (a)(2)(i) of this section;

(iii) Uses or disclosures made pursuant to an authorization under § 164.508;

* * * * *

(g)(1) *Standard: Personal representatives.* * * *

(3) *Implementation specification: unemancipated minors.*

(i) * * *

(ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:

(A) A covered entity may disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, permits or requires such disclosure; and

(B) A covered entity may not disclose protected health information about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis* if an applicable provision of State or other law, including applicable case law, prohibits such disclosure.

(iii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section, a covered entity must, consistent with State or other applicable law, provide a right of access, as set forth in § 164.524 to either:

(A) A parent, guardian, or other person acting *in loco parentis,* as the personal representative of the unemancipated minor;

(B) The unemancipated minor; or

(C) Both.

* * * * *

6. Amend § 164.504 as follows:

a. In paragraph (a), revise the definitions of ''health care component'' and ''hybrid entity''.

b. Revise paragraph (c)(1)(ii).

c. Revise paragraph (c)(3)(iii).

d. Revise paragraph (f)(1)(i).

e. Add paragraph (f)(1)(iii).

The revisions and addition read as follows:

§ 164.504 Uses and disclosures: Organizational requirements.

(a) *Definitions.* * * *

Health care component means a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with paragraph (c)(3)(iii) of this section.

Hybrid entity means a single legal entity:

(1) That is a covered entity;

(2) Whose business activities include both covered and non-covered functions; and

(3) That designates health care components in accordance with paragraph (c)(3)(iii) of this section.

* * * * *

(c)(1) *Implementation specification: Application of other provisions.* * * *

(ii) A reference in such provision to a ''health plan,'' ''covered health care provider,'' or ''health care clearinghouse'' refers to a health care component of the covered entity if such health care component performs the functions of a health plan, health care provider, or health care clearinghouse, as applicable; and

* * * * *

(3) *Implementation specifications: Responsibilities of the covered entity.* * * *

(iii) The covered entity is responsible for designating the components that are part of one or more health care components of the covered entity and documenting the designation as required by § 164.530(j), provided that if the covered entity designates a health care component or components, it must include any component that would meet the definition of covered entity if it were a separate legal entity. Health care component(s) may include a component that performs:

(A) covered functions; and

(B) activities that would make such component a business associate of a component that performs covered functions if the two components were separate legal entities.

* * * * *

(f)(1) *Standard: Requirements for group health plans.* (i) Except as provided under paragraph (f)(1)(ii) or (iii) of this section or as otherwise authorized under § 164.508, a group health plan, in order to disclose protected health information to the plan sponsor or to provide for or permit the disclosure of protected health information to the plan sponsor by a health insurance issuer or HMO with respect to the group health plan, must ensure that the plan documents restrict uses and disclosures of such information by the plan sponsor consistent with the requirements of this subpart.

* * * * *

(iii) The group health plan, or a health insurance issuer or HMO with respect to the group health plan, may disclose to the plan sponsor information on whether the individual is participating in the group health plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the plan to the plan sponsor.

* * * * *

7. Revise § 164.506 to read as follows:

§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.

(a) *Standard: Permitted uses and disclosures.* Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(b) *Standard: Consent permitted.* (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment, or health care operations.

(2) Consent of an individual under this paragraph shall not be effective to permit a use or disclosure of protected health information that is not otherwise permitted or required by this subpart.

(c) *Implementation specifications: Treatment, payment, or health care operations.*

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of another health care provider.

(3) A covered entity may disclose protected health information to another covered entity or health care provider for the payment activities of the entity that receives the information.

(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if both entities have a relationship with the individual who is the subject of the protected health information being requested, and the disclosure is:

(i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or

(ii) For the purpose of health care fraud and abuse detection or compliance.

(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.

8. Amend § 164.508 as follows:

a. Remove ''consistent with consent requirements in § 164.506'' in paragraph (a)(2)(i).

b. Add ''the'' before ''originator'' in paragraph (a)(2)(i)(A).

c. Remove the word ''in'' after the term ''covered entity'' and add in its place the words ''for its own'' in paragraph (a)(2)(i)(B).

d. Add the words ''itself in'' after the word ''defend'' in paragraph (a)(2)(i)(C).

e. Add paragraph (a)(3).

f. Revise paragraphs (b)(1)(i).

g. Remove the word ''be'' in paragraph (b)(1)(ii).

h. Remove '', (d), (e), or (f)'' from paragraph (b)(2)(ii).

i. Remove paragraph (b)(2)(iv).

j. Redesignate paragraphs (b)(2)(v) and (vi) as paragraphs (b)(2)(iv) and (v).

k. Add ''or (4)'' after ''(b)(3)'' in redesignated paragraph (b)(2)(iv).

l. Revise paragraphs (b)(3)(i).

m. Add a comma after the term ''psychotherapy notes'' in paragraph (b)(3)(iii).

n. Remove ''under paragraph (f) of'' and add in its place ''for the use or disclosure of protected health information for such research under'' in paragraph (b)(4)(i).

o. Add the word ''and'' at the end of paragraph (b)(4)(ii)(B).

p. Remove paragraph (b)(4)(iii).

q. Redesignate paragraph (b)(4)(iv) as paragraph (b)(4)(iii).

r. Add ''or the policy itself'' after the word ''policy'' in paragraph (b)(5)(ii).

s. Remove paragraphs (d), (e), and (f).

t. Revise paragraph (c).

The revisions and addition read as follows:

§ 164.508 Uses and disclosures for which an authorization is required.

(a) *Standard: Authorizations for uses and disclosures.* * * *

(3) *Authorization required: Marketing.* (i) Notwithstanding any other provision of this subpart other than § 164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:

(A) A face-to-face communication made by a covered entity to an individual; or

(B) A promotional gift of nominal value provided by the covered entity.

(ii) If the marketing is expected to result in direct or indirect remuneration to the covered entity from a third party, the authorization must state that such remuneration is expected.

* * * * *

(b) *Implementation specifications:* General requirements. * * *

(1) *Valid authorizations.*

(i) A valid authorization is a document that meets the requirements in paragraphs (c)(1) and (2) of this section.

* * * * *

(3) *Compound authorizations.* * * *

(i) An authorization for the use or disclosure of protected health information for a specific research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a consent to participate in such research;

* * * * *

(c) *Implementation specifications: Core elements and requirements.* (1) *Core elements.* A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement ''at the request of the individual'' is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The following statements meet the requirements for an expiration date or an expiration event if the appropriate conditions apply:

(A) The statement ''end of the research study'' or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research.

(B) The statement ''none'' or similar language is sufficient if the authorization is for the covered entity to use or disclose protected health information for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) *Required statements.* In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this rule.

(3) *Plain language requirement.* The authorization must be written in plain language.

(4) *Copy to the individual.* If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

9. Amend § 164.510 as follows:

a. Revise the first sentence of the introductory text.

b. Remove the word ''for'' from paragraph (b)(3).

The revision reads as follows:

§ 164.510 Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. * * *

* * * * *

10. Amend § 164.512 as follows:

a. Revise the section heading and the first sentence of the introductory text.

b. Revise paragraph (b)(1)(iii).

c. In paragraph (b)(1)(v)(A) remove the word ''a'' before the word ''health.''

d. Add the word ''and'' after the semicolon at the end of paragraph (b)(1)(v)(C).

e. Redesignate paragraphs (f)(3)(ii) and (iii) as (f)(3)(i) and (ii).

f. In the second sentence of paragraph (g)(2) add the word ''to'' after the word ''directors.''

g. In paragraph (i)(1)(iii)(A) remove the word ''is'' after the word ''disclosure.''

h. Revise paragraph (i)(2)(ii).

The revisions read as follows:

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section,

subject to the applicable requirements of this section. * * *

* * * * *

(b) *Standard: uses and disclosures for public health activities.*

(1) *Permitted disclosures.* * * *

(iii) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:

(A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;

(B) To track FDA-regulated products;

(C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback); or

(D) To conduct post marketing surveillance;

* * * * *

(i) *Standard: Uses and disclosures for research purposes.* * * *

(2) *Documentation of waiver approval.* * * *

(ii) *Waiver criteria.* A statement that the IRB or privacy board has determined that the alteration or waiver, in whole or in part, of authorization satisfies the following criteria:

(A) The use or disclosure of protected health information involves no more than a minimal risk to the privacy of individuals, based on, at least, the presence of the following elements;

(*1*) An adequate plan to protect the identifiers from improper use and disclosure;

(*2*) An adequate plan to destroy the identifiers at the earliest opportunity consistent with conduct of the research, unless there is a health or research justification for retaining the identifiers or such retention is otherwise required by law; and

(*3*) Adequate written assurances that the protected health information will not be reused or disclosed to any other person or entity, except as required by law, for authorized oversight of the research study, or for other research for which the use or disclosure of protected health information would be permitted by this subpart;

(B) The research could not practicably be conducted without the waiver or alteration; and

(C) The research could not practicably be conducted without access to and use of the protected health information.

* * * * *

11. Amend § 164.514 as follows:

a. Revise paragraph (b)(2)(i)(R).

b. Revise paragraph (d)(1).

c. Revise paragraph (d)(4)(iii).

d. Remove and reserve paragraph (e).

The revisions read as follows:

§ 164.514 Other requirements relating to uses and disclosures of protected health information.

* * * * *

(b) *Implementation specifications: Requirements for de-identification of protected health information.* * * *

(2)(i) * * *

(R) Any other unique identifying number, characteristic, or code, except as permitted by paragraph (c) of this section; and

* * * * *

(d)(1) *Standard: minimum necessary requirements.* In order to comply with § 164.502(b) and this section, a covered entity must meet the requirements of paragraphs (d)(2) through (d)(5) of this section with respect to a request for or the use and disclosure of protected health information.

* * * * *

(4) *Implementation specifications: Minimum necessary requests for protected health information.* * * *

(iii) For all other requests, a covered entity must:

(A) Develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made; and

(B) Review requests for disclosure on an individual basis in accordance with such criteria.

* * * * *

(e) [Removed and Reserved]

* * * * *

12. Amend § 164.520 as follows:

a. Remove the word ''consent or'' from paragraph (b)(1)(ii)(B).

b. Revise paragraph (c)(2)(i).

c. Redesignate paragraphs (c)(2)(ii) and (iii) as (c)(2)(iii) and (iv).

d. Add new paragraph (c)(2)(ii).

e. Amend redesignated paragraph (c)(2)(iv) by removing ''(c)(2)(ii)'' and adding in its place ''(c)(2)(iii)'.

f. Revise paragraph (c)(3)(iii) by adding a sentence at the end.

g. Revise paragraph (e).

The revisions and addition read as follows:

§ 164.520 Notice of privacy practices for protected health information.

* * * * *

(c) *Implementation specifications: provision of notice.* * * *

(2) *Specific requirements for certain covered health care providers.* * * *

(i) Provide the notice:

(A) No later than the date of the first service delivery, including service delivered electronically, to such individual after the compliance date for the covered health care provider; or

(B) In an emergency treatment situation, as soon as reasonably practicable after the emergency treatment situation.

(ii) Except in an emergency treatment situation, make a good faith effort to obtain a written acknowledgment of receipt of the notice provided in accordance with paragraph (c)(2)(i) of this section, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained;

* * * * *

(3) *Specific requirements for electronic notice.* * * *

(iii) * * * The requirements in paragraph (c)(2)(ii) of this section apply to electronic notice.

* * * * *

(e) *Implementation specifications: Documentation.* A covered entity must document compliance with the notice requirements, as required by § 164.530(j), by retaining copies of the notices issued by the covered entity and, if applicable, any written acknowledgments of receipt of the notice or documentation of good faith efforts to obtain such written acknowledgment, in accordance with paragraph (c)(2)(ii) of this section.

§ 164.522 [Amended]

13. Amend § 164.522 by removing the reference to ''164.502(a)(2)(i)'' in paragraph (a)(1)(v), and adding in its place ''164.502(a)(2)(ii)''.

14. Amend § 164.528 as follows:

a. In paragraph (a)(1)(i), remove ''§ 164.502'' and add in its place ''§ 164.506''.

b. Redesignate paragraphs (a)(1)(iii) through (vi) as (a)(1)(iv) through (vii).

c. Add paragraph (a)(1)(iii).

d. Revise paragraph (b)(2)(iv) in its entirety.

e. Remove ''or pursuant to a single authorization under § 164.508,'' from paragraph (b)(3).

The addition and revision read as follows:

§ 164.528 Accounting of disclosures of protected health information.

(a) *Standard: Right to an accounting of disclosures of protected health information.*

(1) * * *

(iii) Pursuant to an authorization as provided in § 164.508.

* * * * *

(b) Implementation specifications: Content of the accounting. * * *

(2) * * *

(iv) A brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure or, in lieu of such statement, a copy of a written request for a disclosure under §§ 164.502(a)(2)(ii) or 164.512, if any.

* * * * *

15. Amend § 164.530 as follows:

a. Redesignate paragraph (c)(2) as (c)(2)(i).

b. Add paragraph (c)(2)(ii).

c. Remove the words ''the requirements'' from paragraph (i)(4)(ii)(A) and add in their place the word ''specifications.''

The addition reads as follows:

§ 164.530 Administrative requirements.

* * * * *

(c) *Standard: Safeguards.* * * *

(2) *Implementation specifications: Safeguards.* (i) * * *

(ii) A covered entity must reasonably safeguard protected health information to limit incidental uses or disclosures made pursuant to an otherwise permitted or required use or disclosure.

* * * * *

16. Revise § 164.532 to read as follows:

§ 164.532 Transition Provisions.

(a) *Standard: Effect of prior authorizations.* Notwithstanding §§ 164.508 and 164.512(i), a covered entity may use or disclose protected health information, consistent with paragraphs (b) and (c) of this section, pursuant to an authorization or other express legal permission obtained from an individual permitting the use or disclosure of protected health information, informed consent of the individual to participate in research, or a waiver of informed consent by an IRB.

(b) *Implementation specification: Effect of prior authorization for purposes other than research.* Notwithstanding any provisions in § 164.508, a covered entity may use or disclose protected health information that it created or received prior to the applicable compliance date of this subpart pursuant to an authorization or other express legal permission obtained from an individual prior to the applicable compliance date of this subpart, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction in accordance with § 164.522(a).

(c) *Implementation specification: Effect of prior permission for research.* Notwithstanding any provisions in §§ 164.508 and 164.512(i), a covered entity may use or disclose, for a specific research study, protected health information that it created or received either before or after the applicable compliance date of this subpart, provided that there is no agreed-to restriction in accordance with § 164.522(a) and that the covered entity has obtained, prior to the applicable compliance date, either:

(1) The authorization or other express legal permission from an individual to use or disclose protected health information for the research study;

(2) The informed consent of the individual to participate in the research study; or

(3) A waiver, by an IRB, of informed consent for the research study, in accordance with 7 CFR 1c.116(d), 10 CFR 745.116(d), 14 CFR 1230.116(d), 15 CFR 27.116(d), 16 CFR 1028.116(d), 21 CFR 50.24, 22 CFR 225.116(d), 24 CFR 60.116(d), 28 CFR 46.116(d), 32 CFR 219.116(d), 34 CFR 97.116(d), 38 CFR 16.116(d), 40 CFR 26.116(d), 45 CFR 46.116(d), 45 CFR 690.116(d), or 49 CFR 11.116(d), provided that a covered entity must obtain authorization in accordance with § 164.508 if, after the compliance date, informed consent is sought from an individual participating in the research study.

(d) *Standard: Effect of prior contracts or other arrangements with business associates.* Notwithstanding any other provisions of this subpart, a covered entity, other than a small health plan, may disclose protected health information to a business associate and may allow a business associate to create, receive, or use protected health information on its behalf pursuant to a written contract or other written arrangement with such business associate that does not comply with §§ 164.502(e) and 164.504(e) consistent with the requirements, and only for such time, set forth in paragraph (e) of this section.

(e) *Implementation specification: Deemed compliance.*—(1) *Qualification.* Notwithstanding other sections of this subpart, a covered entity, other than a small health plan, is deemed to be in compliance with the documentation and contract requirements of §§ 164.502(e) and 164.504(e), with respect to a particular business associate relationship, for the time period set forth in paragraph (e)(2) of this section, if:

(i) Prior to the effective date of this provision, such covered entity has entered into and is operating pursuant to a written contract or other written arrangement with a business associate for such business associate to perform functions or activities or provide services that make the entity a business associate; and

(ii) The contract or other arrangement is not renewed or modified from the effective date of this provision and until the compliance date set forth in § 164.534.

(2) *Limited deemed compliance period.* A prior contract or other arrangement that meets the qualification requirements in paragraph (e) of this section, shall be deemed compliant until the earlier of:

(i) The date such contract or other arrangement is renewed or modified on or after the compliance date set forth in § 164.534; or

(ii) April 14, 2004.

(3) *Covered entity responsibilities.* Nothing in this section shall alter the requirements of a covered entity to comply with part 160, subpart C of this subchapter and §§ 164.524, 164.526, and 164.528 with respect to protected health information held by a business associate.

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Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2002; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately $479.5 million.

DATES: The comment period expires April 26, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2002 fees by September 30, 2002, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1678). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson; Telephone 301–415–6057 or Robert Carlson; Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately $479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 96 percent of its FY 2002 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2002 is $559.1 million, of which approximately $23.7 million has been appropriated from the NWF. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately $479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is $26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately $477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $120.7 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately $8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining $348.9 million

would be recovered through the part 171 annual fees, compared to $331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in millions]

Total Budget Authority	$559.1
Less NWF	−23.7
Less General Fund	−36.0
Balance	$499.5
Fee Recovery Rate for FY 2002	× 96.0%
Total Amount to be Recovered For FY 2002	$479.5
Less Carryover from FY 2001	−1.7
Amount to be Recovered Through Fees and Other Receipts	$477.8
Less Estimated Part 170 Fees and Other Receipts	−120.7
Part 171 Fee Collections Required	$357.1
Part 171 Billing Adjustments:	
Unpaid FY 2002 Invoices (estimated)	2.9
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	−11.1
Subtotal	−8.2
Adjusted Part 171 Collections Required	$348.9

The FY 2002 final fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule would be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule would be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

The NRC, in proposing FY 2002 fees for uranium recovery licensees, is cognizant that the National Mining Association (NMA) has filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the fee schedules to waive all fees for uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NRC not only published the petition in the **Federal Register** for comment (66 FR 55604; November 2, 2001), but also mailed the **Federal Register** document noticing the petition and inviting public comment to each of the NRC's more than 5,000 licensees. The comment period expired on January 16, 2002. The NRC is now evaluating the comments it has received in response to this action.

The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between $3.0 and $4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs not attributable to those licensees paying annual fees. Thus, the NRC is inviting those who have arguments to place before the Commission *that were not submitted* in response to the November 2, 2001, **Federal Register** document requesting public comment on the petition to do so now.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates. Additionally, the NRC is proposing to revise part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in § 170.20. These proposed rates would be based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The proposed hourly rate for the reactor program is $156 per hour ($276,345 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed hourly rate for the materials program (nuclear materials and nuclear waste programs) is $152 per hour ($269,451 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were $150 and $144, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2002.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2002 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor programs	Materials program
Direct Program Salaries & Benefits	117.0	32.2
Overhead Salaries & Benefits, Program Travel and Other Support	59.2	15.6
Allocated Agency Management and Support	106.9	29.0
Subtotal	283.1	76.8
Less offsetting receipts	−0 .1	−0.0
Total Budget Included in Hourly Rate	283.0	76.8
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	276,345	269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	156	152

As shown in Table II, dividing the $283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of $276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' Similarly, dividing the $76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of $269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program would be $152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater Than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in § 72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of § 170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of § 170.31 currently refers only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

3. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2002 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application (''flat'' fees) would be adjusted to reflect the increase in the professional hourly rates from FY 2001. The amounts of the materials licensing ''flat'' fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing ''flat'' fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC as a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to § 170.21, Footnote 5 to § 170.31, and material in the definition of *Special Projects* in § 170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in § 170.11, Exemptions.

Therefore, the NRC is proposing to delete Footnote 4 to § 170.21 and Footnote 5 to § 170.31, to modify the language that is currently in those footnotes and add the revised fee waiver provisions to the Exemption section as § 170.11(a)(1). The NRC also proposes to remove the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in § 170.3. The fee waiver provisions will be revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The proposed modification would also clarify that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in § 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the types of submissions that meet the fee waiver criteria and those that do not would be provided in § 170.11(a)(1).

In summary, the NRC is proposing to amend 10 CFR part 170 to—

1. Revise the materials and reactor program FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates;

3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees would be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and

4. Add to § 170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to § 170.21 and Footnote 5 to § 170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These footnotes, as well as material in the definition of *Special Projects* in § 170.3 related to certain special requests and reports submitted to NRC for review, would be deleted.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2002, to amend part 171 to specifically cover combined licenses issued under part 52, to clarify the annual fee exemption provision for reactors, and to modify the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. The proposed amendments are as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is $348.9 million, compared to $331.6 million for FY 2001.

The proposed FY 2002 annual fees would increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a $3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the proposed decreases for the Title II uranium recovery specific licenses are based on a proposed change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licenses. This proposed change is described in detail in B. below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a ''Point of Contact.'' As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, it also results in more of the budgeted costs for that class being

recovered through annual fees. However, the change does not result in an increase in total fees paid by these classes. Licensees in the rare earth facility class, for example, would have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased from FY 2001. The increase in annual fees is primarily the result of the change in PM policy which caused a shift in cost recovery from part 170 to part 171. The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III.—FEES FOR THE RARE EARTH CLASS FOR FY 2001 AND FY 2002

[Dollars in millions]

	FY 2001	FY 2002	Difference
Estimated part 170 fees	$.81	$.50	−$.31
Total annual fee amount	.09	.21	.12
Total	.90	.71	−.19

Table IV below shows the proposed rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2002

Class/category of licenses	Proposed FY 2002 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,869,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,300
High Enriched Uranium Fuel Facility	4,073,000
Low Enriched Uranium Fuel Facility	1,366,000
UF_6 Conversion Facility	585,000
Uranium Mills	7,700
Transportation:	
Users/Fabricators	72,800
Users Only	7,300
Typical Materials Users:	
Radiographers	13,700
Well Loggers	10,000
Gauge Users	2,700
Broad Scope Medical	26,200

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2002 will be reduced by about $20.0 million. The total FY 2002 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$8.4
b. Agreement State oversight	8.7
c. Low-level waste disposal generic activities	1.5
d. Site decommissioning management plan activities not recovered under part 170	8.3
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	7.9
b. Licensing and inspection activities associated with other Federal agencies	3.7
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.0
b. Generic decommissioning/reclamation (except those related to power reactors)	8.3
Total surcharge costs	64.4

TABLE V.—SURCHARGE COSTS—Continued

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
Less 4 percent of NRC's FY 2002 total budget (NWF and General Fund amounts)	−20.0
Total Surcharge Costs to be Recovered	44.4

As shown in Table V, $44.4 million would be the total surcharge cost allocated to the various classes of licenses for FY 2002. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2002 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Operating Power Reactors	74	1.1	79.7	34.1	35.3
Spent Fuel Storage/Reactor Decomm.	.....	.....	7.7	3.3	3.3
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.8	2.5	2.6
Materials Users	18	0.3	4.5	1.9	2.2
Transportation	.....	.....	1.3	0.5	0.5
Rare Earth Facilities	.....	.....	0.2	0.1	0.1
Uranium Recovery	.....	.....	0.9	0.4	0.4
Total Surcharge	100	1.5	100.0	42.9	44.4

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address *http://www.gov/reading-rm/adams.html.* During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

Because the FY 2002 fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule would be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule would be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately $18.8 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to part 171 fees applicable to fuel facilities, the budgeted costs included in the annual fee would be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility

permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The proposed annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the basis for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a numeric value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII below.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF_6 Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the $18.8 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES

Facility type	Proposed FY 2002 annual fee
High Enriched Uranium Fuel	$4,073,000
Uranium Enrichment	2,537,000
Low Enriched Uranium	1,366,000
UF_6 Conversion	585,000
Limited Operations Facility	537,000
Others	390,000

B. Uranium Recovery Facilities

The FY 2002 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.7 million. Based on the following proposed change in the way NRC allocates these costs, approximately $1.0 million of this amount would be assessed to DOE. The remaining $0.7 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

The NRC is proposing to revise its methodology for allocating uranium recovery budgeted costs to be recovered through annual fees among the two major types of programs in the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's UMTRCA Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE is not currently assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) bear the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined that it was appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the proposed methodology would allocate the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. Thus, the costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$377,232
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for DOE	1,056,000
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II Specific Licenses	678,768

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Level of benefit			
	Number of facilities	Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following proposed annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	Proposed FY 2002 annual fee
Class I (conventional mills)	$77,700
Class II (solution mining)	65,100
11e.(2) disposal	47,900
11e.(2) disposal incidental to existing tailings sites	7,600

In the FY 2001 final rule (66 FR 32478), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

C. Power Reactors

The approximately $273.6 million in budgeted costs to be recovered through FY 2002 annual fees assessed to the power reactor class would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2002 annual fee of $2,630,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2002 spent fuel storage/reactor decommissioning annual fee of $239,000. This would result in a total FY 2002 annual fee of $2,869,000 for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately $28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2002 annual fee of $239,000 per licensee.

E. Non-Power Reactors

Approximately $285,200 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2002. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2002 annual fee of $71,300 for each licensee.

F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately $205,300 for rare earth facilities to be recovered through annual fees would be divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2002 annual fee of $68,400 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

G. Materials Users

To equitably and fairly allocate the $25.1 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $17.5 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately $5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately $126,900 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.9 million in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $300,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in § 171.16(d).

H. Transportation

Of the approximately $4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.4 million would be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.4 million, approximately 25 percent would be allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of $7,300 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of $72,800 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Part 52 Combined Licenses

The NRC proposes revising part 171 to: authorize assessment of annual fees for holders of combined licenses issued under part 52; clarify that the annual fees would be assessed for each license, and not for each unit; and establish when assessment of annual fees would begin.

Part 171 currently covers annual fees for part 50 licenses, but does not specifically cover annual fees for combined licenses issued under part 52. Additionally, neither part 52 nor part 171 addresses when NRC would begin to assess an annual fee to a part 52 license holder. The NRC proposes to revise § 171.3 ''Scope'' to specify that the annual fee regulations also apply to any person holding a combined license issued under part 52.

The annual fees for a part 52 combined license would be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Currently, § 171.15(a) provides that reactor licensees shall pay an annual fee ''* * * for each unit for each license held * * *''. It is the agency's present practice to charge annual fees per license, and the NRC is proposing to revise § 171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no existing combined licenses issued under part 52. However, the NRC is proposing these changes so potential applicants for a part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying § 171.11(c) to clarify that the annual fee exemption provision applies only to ''operating'' reactors. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986), which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with ''operating'' licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would

have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in § 171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for § 171.11, the NRC stated that the added exemption section ''* * * provides that the holder of a license to 'operate' a power reactor * * * may apply to the Commission for partial relief from annual fee[s].''

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington DC 20555–0001 in accordance with § 171.9.

4. Administrative Amendment

The NRC is proposing to modify Category 1.B. of § 171.16(d) to specifically include licenses issued under part 72 for the reactor-related GTCC waste. This is an administrative change that would be made only to ensure consistency with the proposed description for fee category 1.B. of § 170.31 as described in A. above. The NRC is not proposing an annual fee for this category of license.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2002;

2. Modify part 171 to specifically authorize assessment of annual fees to part 52 combined licenses;

3. Clarify that the annual fee exemption provision in § 171.11(c) applies only to ''operating'' reactors;

4. Make an administrative change to fee category 1.B. of § 171.16(d) to be consistent with the proposed change to category 1.B. of § 170.31.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 96 percent of its budget authority in FY 2002 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water

Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2002 is 96 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2002 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 96 percent of the Commission's FY 2002 budget of $559.1 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 96 percent of its FY 2002 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2002. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2002.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special projects* and adding, in alphabetical order, the definition for *Greater than Class C Waste* or *GTCC Waste* to read as follows:

§ 170.3 Definitions.

* * * * *

Greater than Class C Waste or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

* * * * *

3. In § 170.11, paragraph (a)(1) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A special project that is a request/report submitted to the NRC—

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts.

(A) This fee exemption applies only when:

(*1*) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and

(*2*) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(*1*) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities)—$156 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—$152 per hour

5. In § 170.21, the introductory text and, in the table, Category J, Category K, and footnotes 1, 2, and 3 are revised and footnote 4 is removed to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services:

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses: Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$9,900.
Amendment	$9,900.
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	5,800.
Amendment	5,800.
3. Application for export of components requiring foreign government assurances only.	
Application-new license	1,800.
Amendment	1,800.
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application-new license	1,200.
Amendment	1,200.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
Amendment	230.

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fees[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$700.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application	$1,400.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170.
C. All other source material licenses:	
Application	$6,000.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,100.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,300.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$9,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,600.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,500.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$2,400.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$3,600.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$620.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,000.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,600.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,700.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Registration	$4,400.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,400.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Application	$450.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,800.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,700.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$5,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,100.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,600.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,700.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,300.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$350.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,600.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,600.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,700.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$580.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$680.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,900.
Amendment	$9,900.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,800.
Amendment	$5,800.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,800.
Amendment	$1,800.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$230.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,400.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. Section 171.3 is revised to read as follows:

§ 171.3. Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In § 171.5, the definition of *Greater than Class C Waste* or *GTCC waste* is added in alphabetical order to read as follows:

§ 171.5 Definitions.

* * * * *

Greater than Class C Waste or *GTCC waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

10. In § 171.11, paragraph (c) is revised to read as follows:

§ 171.11 Exemptions.

* * * * *

(c) An exemption for operating reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

* * * * *

11. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2002 annual fee for each operating power reactor which must be collected by September 30, 2002, is $2,869,000.

(2) The FY 2002 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2002 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $239,000.

(2) The FY 2002 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2002 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2002 surcharge allocated to the operating power reactor class of licenses is $35.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2002 operating power reactor surcharge to be assessed to each operating power reactor is approximately $339,400. This amount is calculated by dividing the total operating power reactor surcharge ($35.3 million) by the number of operating power reactors (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $27,300. This amount is

calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2002 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$71,300
Test reactor—$71,300

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	$2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	$2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	$2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at *http://www.nrc.gov.* For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at <fees@nrc.gov.>

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section. The FY 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox, SNM–42	$4,073,000
Nuclear Fuel Services, SNM–124	4,073,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
General Electric Company, SNM–1097	1,366,000
Siemens Nuclear Power, SNM–1227	1,366,000
Westinghouse Electric Company, SNM–1107	1,366,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	537,000
(b) All Others:	
General Electric SNM–960	390,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,500
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,600
E. Licenses or certificates for the operation of a uranium enrichment facility	2,537,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	585,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	77,700
Class II facilities [4]	65,100
Other facilities [4]	68,400
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	47,900
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	7,600
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	760
C. All other source material licenses	12,300
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,400
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,700
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	14,000
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,500
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	23,200
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	3,700
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,300
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,400
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,600
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	4,900
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,300
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	13,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,700
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,100
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	19,200
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	26,200
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,000
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	690
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	72,800
Users	7,300
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	283,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,368,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,056,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed activities entirely by September 30, 2001. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 19th day of March, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. In addition, $36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately $479.5 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation

of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2002. Rebaselining fees would result in increased annual fees for a majority of the categories of licenses, and decreased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2002 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the

maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees; rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

As stated in the 2001 Regulatory Flexibility Analysis, (66 FR 32452; June 14, 2001), the NRC will re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at $2,300, and the lower tier small entity annual fee will remain at $500. The NRC plans to re-examine the small entity fees in FY 2003.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 96 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 2001 fee rule remain valid for FY 2002.

Attachment 1 to Appendix A; U. S. Nuclear Regulatory Commission Small Entity Compliance Guide—Fiscal Year 2002

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees comply with the FY 2002 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2002 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's external web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institutional institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association , who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. Those licensees that qualify as a ''small entity'' under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates— not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources —not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq*. NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 02–7114 Filed 3–26–02; 8:45 am]

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Federal Register

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March 27, 2002

Part III

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; Fee Recovery for FY 2002; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately $479.5 million.

DATES: The comment period expires April 26, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2002 fees by September 30, 2002, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1678). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O–1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson; Telephone 301–415–6057 or Robert Carlson; Telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the NWF, through fees and other offsetting receipts. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately $479.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 96 percent of its FY 2002 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2002 is $559.1 million, of which approximately $23.7 million has been appropriated from the NWF. In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately $479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is $26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately $477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $120.7 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately $8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining $348.9 million

would be recovered through the part 171 annual fees, compared to $331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002

[Dollars in millions]

Total Budget Authority	$559.1
Less NWF	−23.7
Less General Fund	−36.0
Balance	$499.5
Fee Recovery Rate for FY 2002	× 96.0%
Total Amount to be Recovered For FY 2002	$479.5
Less Carryover from FY 2001	−1.7
Amount to be Recovered Through Fees and Other Receipts	$477.8
Less Estimated Part 170 Fees and Other Receipts	−120.7
Part 171 Fee Collections Required	$357.1
Part 171 Billing Adjustments:	
Unpaid FY 2002 Invoices (estimated)	2.9
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	−11.1
Subtotal	−8.2
Adjusted Part 171 Collections Required	$348.9

The FY 2002 final fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule would be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule would be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

The NRC, in proposing FY 2002 fees for uranium recovery licensees, is cognizant that the National Mining Association (NMA) has filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the fee schedules to waive all fees for uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NRC not only published the petition in the **Federal Register** for comment (66 FR 55604; November 2, 2001), but also mailed the **Federal Register** document noticing the petition and inviting public comment to each of the NRC's more than 5,000 licensees. The comment period expired on January 16, 2002. The NRC is now evaluating the comments it has received in response to this action.

The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between $3.0 and $4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs not attributable to those licensees paying annual fees. Thus, the NRC is inviting those who have arguments to place before the Commission *that were not submitted* in response to the November 2, 2001, **Federal Register** document requesting public comment on the petition to do so now.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates. Additionally, the NRC is proposing to revise part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in § 170.20. These proposed rates would be based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The proposed hourly rate for the reactor program is $156 per hour ($276,345 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed hourly rate for the materials program (nuclear materials and nuclear waste programs) is $152 per hour ($269,451 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were $150 and $144, respectively. The proposed increases are primarily due to the Government-wide pay increase in FY 2002.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2002 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

	Reactor programs	Materials program
Direct Program Salaries & Benefits	117.0	32.2
Overhead Salaries & Benefits, Program Travel and Other Support	59.2	15.6
Allocated Agency Management and Support	106.9	29.0
Subtotal	283.1	76.8
Less offsetting receipts	−0 .1	−0.0
Total Budget Included in Hourly Rate	283.0	76.8
Program Direct FTEs	1024.0	285.1
Rate per Direct FTE	276,345	269,451
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	156	152

As shown in Table II, dividing the $283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of $276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' Similarly, dividing the $76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of $269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program would be $152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater Than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in § 72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of § 170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of § 170.31 currently refers only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

3. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2002 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application (''flat'' fees) would be adjusted to reflect the increase in the professional hourly rates from FY 2001. The amounts of the materials licensing ''flat'' fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing ''flat'' fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to § 170.21 and criterion (c) of Footnote 5 to § 170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC as a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to § 170.21, Footnote 5 to § 170.31, and material in the definition of *Special Projects* in § 170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in § 170.11, Exemptions.

Therefore, the NRC is proposing to delete Footnote 4 to § 170.21 and Footnote 5 to § 170.31, to modify the language that is currently in those footnotes and add the revised fee waiver provisions to the Exemption section as § 170.11(a)(1). The NRC also proposes to remove the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in § 170.3. The fee waiver provisions will be revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the time of the submission, plans to use the submission for that purpose. The proposed modification would also clarify that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in § 170.5, fee exemption requests should be made to the NRC's Chief Financial Officer. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the types of submissions that meet the fee waiver criteria and those that do not would be provided in § 170.11(a)(1).

In summary, the NRC is proposing to amend 10 CFR part 170 to—

1. Revise the materials and reactor program FTE hourly rates;

2. Revise the licensing fees to be assessed to reflect the revised hourly rates;

3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees would be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and

4. Add to § 170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to § 170.21 and Footnote 5 to § 170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These footnotes, as well as material in the definition of *Special Projects* in § 170.3 related to certain special requests and reports submitted to NRC for review, would be deleted.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2002, to amend part 171 to specifically cover combined licenses issued under part 52, to clarify the annual fee exemption provision for reactors, and to modify the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. The proposed amendments are as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees for all classes of licenses, except for the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is $348.9 million, compared to $331.6 million for FY 2001.

The proposed FY 2002 annual fees would increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, the reduction in the fee recovery rate from 98 percent for FY 2001 to 96 percent for FY 2002, the estimated part 170 collections for the various classes of licenses, a $1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published (compared to a $3.1 million carryover from FY 2000 which reduced FY 2001 annual fees), the increased hourly rates, and decreases in the numbers of licensees for certain categories of licenses. In addition, the proposed decreases for the Title II uranium recovery specific licenses are based on a proposed change to the methodology for allocating the annual fee amount for the uranium recovery class among Title I and Title II licenses. This proposed change is described in detail in B. below.

In addition, for some classes of materials licenses, a change in policy for assigning Project Managers (PMs) has contributed to the annual fee increases. In the last few years, part 170 fees have increased for certain classes of licenses due to initiatives to recover costs for additional activities through fees for services rather than annual fees. One such initiative was the policy for full cost recovery under part 170 for PMs, which became effective with the FY 1999 final fee rule (64 FR 31448; June 10, 1999). However, in response to concerns expressed by materials licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) in July 2001 changed its policy for assigning PMs. The revised NMSS policy has resulted in classifying approximately four staff members as PMs at this time, compared to approximately 97 in FY 2000. Under NMSS's revised policy, if project management duties to support a licensee/facility do not exceed 75 percent of the assigned person's time for any given two week period, then the staff member will be considered a ''Point of Contact.'' As a result, that person's time which is not specifically associated with a licensing action or inspection is now recovered under part 171.

Although the change in policy for assigning PMs causes a decrease in estimated part 170 collections for some classes, it also results in more of the budgeted costs for that class being

recovered through annual fees. However, the change does not result in an increase in total fees paid by these classes. Licensees in the rare earth facility class, for example, would have an annual fee increase of approximately 129 percent, although the total budgeted costs for the class actually decreased from FY 2001. The increase in annual fees is primarily the result of the change in PM policy which caused a shift in cost recovery from part 170 to part 171. The effect of this change on the part 170 fees, part 171 fees, and the total fees for the class compared to FY 2001 is illustrated in Table III below.

TABLE III.—FEES FOR THE RARE EARTH CLASS FOR FY 2001 AND FY 2002

[Dollars in millions]

	FY 2001	FY 2002	Difference
Estimated part 170 fees	$.81	$.50	−$.31
Total annual fee amount	.09	.21	.12
Total	.90	.71	−.19

Table IV below shows the proposed rebaselined annual fees for FY 2002 for representative categories of licenses.

TABLE IV.—REBASELINED ANNUAL FEES FOR FY 2002

Class/category of licenses	Proposed FY 2002 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$2,869,000
Spent Fuel Storage/Reactor Decommissioning	239,000
Nonpower Reactors	71,300
High Enriched Uranium Fuel Facility	4,073,000
Low Enriched Uranium Fuel Facility	1,366,000
UF_6 Conversion Facility	585,000
Uranium Mills	7,700
Transportation:	
Users/Fabricators	72,800
Users Only	7,300
Typical Materials Users:	
Radiographers	13,700
Well Loggers	10,000
Gauge Users	2,700
Broad Scope Medical	26,200

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2002 will be reduced by about $20.0 million. The total FY 2002 budgeted costs for these activities and the reduction to these amounts for fee recovery purposes are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$8.4
b. Agreement State oversight	8.7
c. Low-level waste disposal generic activities	1.5
d. Site decommissioning management plan activities not recovered under part 170	8.3
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	7.9
b. Licensing and inspection activities associated with other Federal agencies	3.7
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.5
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	13.0
b. Generic decommissioning/reclamation (except those related to power reactors)	8.3
Total surcharge costs	64.4

TABLE V.—SURCHARGE COSTS—Continued

[Dollars in millions]

Category of costs	FY 2002 budgeted costs
Less 4 percent of NRC's FY 2002 total budget (NWF and General Fund amounts)	−20.0
Total Surcharge Costs to be Recovered	44.4

As shown in Table V, $44.4 million would be the total surcharge cost allocated to the various classes of licenses for FY 2002. The NRC would continue to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licenses based on the percent of the budget for that class. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The FY 2002 proposed surcharge costs that would be allocated to each class of licenses are shown in Table VI. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE VI.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$,M	Percent	$,M	$,M
Operating Power Reactors	74	1.1	79.7	34.1	35.3
Spent Fuel Storage/Reactor Decomm.	.....	.....	7.7	3.3	3.3
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.8	2.5	2.6
Materials Users	18	0.3	4.5	1.9	2.2
Transportation	.....	.....	1.3	0.5	0.5
Rare Earth Facilities	.....	.....	0.2	0.1	0.1
Uranium Recovery	.....	.....	0.9	0.4	0.4
Total Surcharge	100	1.5	100.0	42.9	44.4

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address *http://www.gov/reading-rm/adams.html.* During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

Because the FY 2002 fee rule will be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule would be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule would be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

The FY 2002 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licenses is approximately $18.8 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to part 171 fees applicable to fuel facilities, the budgeted costs included in the annual fee would be spread among the remaining licensees/certificate holders, and result in a higher fee for those remaining in that fee category.

Prior to the beginning of FY 2002, one low enriched uranium fuel facility

permanently ceased licensed operations and filed for an amendment to place its license in a decommissioning status. The proposed annual fees for the fuel facility class reflect this change in the number of licensees subject to annual fees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by the license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, it is still used as the basis for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensee/certificate holders by authorized material types and use/activities and the relative programmatic effort associated with each category. The programmatic effort (expressed as a numeric value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth, and rigor).

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VII below.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0%)	76 (57.1%)
Enrichment	2	70 (27.7%)	34 (25.6%)
Low Enriched Uranium Fuel	3	66 (26.1%)	18 (13.5%)
UF_6 Conversion	1	12 (4.7%)	0 (0%)
Limited Operations Facility	1	8 (3.2%)	3 (2.3%)
Others	1	6 (2.4%)	2 (1.5%)

Applying these factors to the safety, safeguards, and surcharge components of the $18.8 million total annual fee amount for the fuel facility class results in the proposed annual fees for each licensee within the subcategories of this class summarized in the table below.

TABLE VIII.—PROPOSED ANNUAL FEES FOR FUEL FACILITIES

Facility type	Proposed FY 2002 annual fee
High Enriched Uranium Fuel	$4,073,000
Uranium Enrichment	2,537,000
Low Enriched Uranium	1,366,000
UF_6 Conversion	585,000
Limited Operations Facility	537,000
Others	390,000

B. Uranium Recovery Facilities

The FY 2002 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $1.7 million. Based on the following proposed change in the way NRC allocates these costs, approximately $1.0 million of this amount would be assessed to DOE. The remaining $0.7 million would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

The NRC is proposing to revise its methodology for allocating uranium recovery budgeted costs to be recovered through annual fees among the two major types of programs in the uranium recovery class. The first type is the NRC's Title I program for DOE sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The second type is the NRC's UMTRCA Title II program; specifically, commercial solution mining facilities, conventional mills, and 11e.(2) mill tailings disposal facilities. Although the Title I program is part of the uranium recovery class, DOE is not currently assessed a portion of the NRC budgeted costs attributed to generic/other activities for the uranium recovery program. As a consequence, licensees under the NRC's specific licensing program (UMTRCA Title II) bear the entire cost of these activities.

In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined that it was appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care.

Therefore, the proposed methodology would allocate the total annual fee amount, less the amounts specifically budgeted for Title I activities, equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. Thus, the costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$377,232
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for DOE	1,056,000
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50% of generic/other uranium recovery budgeted costs	489,259
50% of uranium recovery surcharge	189,509
Total Annual Fee Amount for Title II Specific Licenses	678,768

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of specifically licensed Title II uranium recovery licensees are as follows:

TABLE IX.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Level of benefit			
	Number of facilities	Category weight	Total weight	
			Value	Percent
Class I (conventional mills)	3	770	2,310	34
Class II (solution mining)	6	645	3,870	58
11e.(2) disposal	1	475	475	7
11e.(2) disposal incident to existing tailings sites	1	75	75	1

Applying these factors to the $0.7 million in budgeted costs to be recovered from Title II specific licensees results in the following proposed annual fees:

TABLE X.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	Proposed FY 2002 annual fee
Class I (conventional mills)	$77,700
Class II (solution mining)	65,100
11e.(2) disposal	47,900
11e.(2) disposal incidental to existing tailings sites	7,600

In the FY 2001 final rule (66 FR 32478), the NRC revised § 171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2002 exceed the amount of the revised annual fee, the overpayment will be refunded. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

C. Power Reactors

The approximately $273.6 million in budgeted costs to be recovered through FY 2002 annual fees assessed to the power reactor class would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2002 annual fee of $2,630,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2002 spent fuel storage/reactor decommissioning annual fee of $239,000. This would result in a total FY 2002 annual fee of $2,869,000 for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately $28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2002 annual fee of $239,000 per licensee.

E. Non-Power Reactors

Approximately $285,200 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2002. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2002 annual fee of $71,300 for each licensee.

F. Rare Earth Facilities

The FY 2002 budgeted costs of approximately $205,300 for rare earth facilities to be recovered through annual fees would be divided equally among the three licensees who have a specific license for receipt and processing of source material. The result is a proposed FY 2002 annual fee of $68,400 for each rare earth facility.

As explained previously, the increase in annual fees for the rare earth class is not the result of increased budgeted costs for the class, but rather the result of the change in NMSS's revised PM policy, which resulted in a shift of cost recovery for certain activities from part 170 to part 171.

G. Materials Users

To equitably and fairly allocate the $25.1 million in FY 2002 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $17.5 million in general costs and is 1.07 for FY 2002. The inspection multiplier is the multiple necessary to recover approximately $5.3 million in inspection costs for FY 2002, and is 1.1 for FY 2002. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2002, of the unique costs attributable to medical licensees for the medical development program, approximately $126,900 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the $1.9 million in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $300,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in § 171.16(d).

H. Transportation

Of the approximately $4.8 million in FY 2002 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.4 million would be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $3.4 million, approximately 25 percent would be allocated to the 77 quality assurance plans authorizing use only and the 39 quality assurance plans authorizing use and design/fabrication. The remaining 75 percent would be allocated only to the 39 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of $7,300 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of $72,800 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Part 52 Combined Licenses

The NRC proposes revising part 171 to: authorize assessment of annual fees for holders of combined licenses issued under part 52; clarify that the annual fees would be assessed for each license, and not for each unit; and establish when assessment of annual fees would begin.

Part 171 currently covers annual fees for part 50 licenses, but does not specifically cover annual fees for combined licenses issued under part 52. Additionally, neither part 52 nor part 171 addresses when NRC would begin to assess an annual fee to a part 52 license holder. The NRC proposes to revise § 171.3 ''Scope'' to specify that the annual fee regulations also apply to any person holding a combined license issued under part 52.

The annual fees for a part 52 combined license would be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Currently, § 171.15(a) provides that reactor licensees shall pay an annual fee ''* * * for each unit for each license held * * *''. It is the agency's present practice to charge annual fees per license, and the NRC is proposing to revise § 171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no existing combined licenses issued under part 52. However, the NRC is proposing these changes so potential applicants for a part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying § 171.11(c) to clarify that the annual fee exemption provision applies only to ''operating'' reactors. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986), which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with ''operating'' licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would

have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in § 171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for § 171.11, the NRC stated that the added exemption section ''* * * provides that the holder of a license to 'operate' a power reactor * * * may apply to the Commission for partial relief from annual fee[s].''

In the FY 1999 final fee rule (64 FR 31448; June 10, 1999), the NRC established the Spent Fuel Storage/Reactor Decommissioning (SFSRD) class with an annual fee to be assessed to all reactor licensees having fuel onsite, regardless of their operating status. In the statement of considerations for the FY 1999 fee rule, the NRC stated that the Commission determined all reactors, including those which are shut down, should pay the SFSRD annual fee to recover the NRC's costs related to generic reactor decommissioning and spent fuel storage activities. It is clear from the statement of considerations that the Commission did not intend to relieve reactors that are not operating from the annual fee requirements unless they had permanently ceased operations and had no fuel onsite.

The Commission reemphasizes that all communications concerning annual fees, including exemption requests, should be addressed to the Chief Financial Officer, U.S. NRC, Washington DC 20555–0001 in accordance with § 171.9.

4. Administrative Amendment

The NRC is proposing to modify Category 1.B. of § 171.16(d) to specifically include licenses issued under part 72 for the reactor-related GTCC waste. This is an administrative change that would be made only to ensure consistency with the proposed description for fee category 1.B. of § 170.31 as described in A. above. The NRC is not proposing an annual fee for this category of license.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2002;

2. Modify part 171 to specifically authorize assessment of annual fees to part 52 combined licenses;

3. Clarify that the annual fee exemption provision in § 171.11(c) applies only to ''operating'' reactors;

4. Make an administrative change to fee category 1.B. of § 171.16(d) to be consistent with the proposed change to category 1.B. of § 170.31.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 96 percent of its budget authority in FY 2002 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water

Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2002 is 96 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2002 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 96 percent of the Commission's FY 2002 budget of $559.1 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, $36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this $36.0 million shall be excluded from license fee revenues.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 96 percent of its FY 2002 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2002. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2002.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special projects* and adding, in alphabetical order, the definition for *Greater than Class C Waste* or *GTCC Waste* to read as follows:

§ 170.3 Definitions.

* * * * *

Greater than Class C Waste or *GTCC Waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

* * * * *

3. In § 170.11, paragraph (a)(1) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A special project that is a request/report submitted to the NRC—

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts.

(A) This fee exemption applies only when:

(*1*) It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and

(*2*) The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(*1*) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

* * * * *

4. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities)—$156 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)—$152 per hour

5. In § 170.21, the introductory text and, in the table, Category J, Category K, and footnotes 1, 2, and 3 are revised and footnote 4 is removed to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services:

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses: Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110.	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application-new license	$9,900.
Amendment	$9,900.
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application-new license	5,800.
Amendment	5,800.
3. Application for export of components requiring foreign government assurances only.	
Application-new license	1,800.
Amendment	1,800.
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances.	
Application-new license	1,200.
Amendment	1,200.
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review.	

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
Amendment	230.

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fees[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$700.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application	$1,400.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170.
C. All other source material licenses:	
Application	$6,000.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,100.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,300.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$9,200.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,600.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,500.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$2,400.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$3,600.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$620.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,000.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,600.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,700.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Registration	$4,400.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,400.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Application	$450.
4. Waste disposal and processing:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,800.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,700.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$5,900.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,100.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,600.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,700.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,300.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$350.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,600.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,600.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,700.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$580.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$680.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fees [2 3]
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite.	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries.	
Application—new license	$9,900.
Amendment	$9,900.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.	
Application—new license	$5,800.
Amendment	$5,800.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.	
Application—new license	$1,800.
Amendment	$1,800.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments.	
Amendment	$230.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,400.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

7. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

8. Section 171.3 is revised to read as follows:

§ 171.3. Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part.

9. In § 171.5, the definition of *Greater than Class C Waste* or *GTCC waste* is added in alphabetical order to read as follows:

§ 171.5 Definitions.

* * * * *

Greater than Class C Waste or *GTCC waste* means low-level radioactive waste that exceeds the concentration limits of radionuclides established for Class C waste in 10 CFR 61.55.

* * * * *

10. In § 171.11, paragraph (c) is revised to read as follows:

§ 171.11 Exemptions.

* * * * *

(c) An exemption for operating reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

(1) Age of the reactor;

(2) Size of the reactor;

(3) Number of customers in rate base;

(4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and

(5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

* * * * *

11. Section 171.15 is revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2002 annual fee for each operating power reactor which must be collected by September 30, 2002, is $2,869,000.

(2) The FY 2002 annual fee is comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2002 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $239,000.

(2) The FY 2002 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2002 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2002 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

(2) The total FY 2002 surcharge allocated to the operating power reactor class of licenses is $35.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2002 operating power reactor surcharge to be assessed to each operating power reactor is approximately $339,400. This amount is calculated by dividing the total operating power reactor surcharge ($35.3 million) by the number of operating power reactors (104).

(3) The FY 2002 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $3.3 million. The FY 2002 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $27,300. This amount is

calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2002 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$71,300
Test reactor—$71,300

12. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	$2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	$2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	$2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at *http://www.nrc.gov.* For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at <fees@nrc.gov.>

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2002 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2002 surcharge are shown for convenience in paragraph (e) of this section. The FY 2002 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox, SNM–42	$4,073,000
Nuclear Fuel Services, SNM–124	4,073,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
General Electric Company, SNM–1097	1,366,000
Siemens Nuclear Power, SNM–1227	1,366,000
Westinghouse Electric Company, SNM–1107	1,366,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	537,000
(b) All Others:	
General Electric SNM–960	390,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,500
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,600
E. Licenses or certificates for the operation of a uranium enrichment facility	2,537,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	585,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	77,700
Class II facilities [4]	65,100
Other facilities [4]	68,400
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	47,900
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	7,600
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	760
C. All other source material licenses	12,300
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,400
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,700
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee Category 3D	14,000
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,500
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,600
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	23,200
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	3,700
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,300
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,400
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,600
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	4,900
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,300
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	13,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,700
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,100
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,000
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	19,200
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	26,200
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9]	5,100
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,000
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	690
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	72,800
Users	7,300
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	283,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,368,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1, 2, 3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,056,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 2001, and permanently ceased licensed activities entirely by September 30, 2001. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

Dated at Rockville, Maryland, this 19th day of March, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. In addition, $36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately $479.5 million.

OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation

of agency resources among the various classes of licenses and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2002. Rebaselining fees would result in increased annual fees for a majority of the categories of licenses, and decreased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2002 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,300 licensees for FY 2001) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the

maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees; rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of $500 and $2,300 provide considerable relief to many small entities.

As stated in the 2001 Regulatory Flexibility Analysis, (66 FR 32452; June 14, 2001), the NRC will re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule (65 FR 36946; June 12, 2000). Therefore, the FY 2002 small entity annual fee will remain at $2,300, and the lower tier small entity annual fee will remain at $500. The NRC plans to re-examine the small entity fees in FY 2003.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 96 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions established in the FY 2001 fee rule remain valid for FY 2002.

Attachment 1 to Appendix A; U. S. Nuclear Regulatory Commission Small Entity Compliance Guide—Fiscal Year 2002

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NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC material licensees comply with the FY 2002 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2002 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's external web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institutional institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration's regulations (13 CFR part 121).

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association , who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's external web site at *http://www.nrc.gov*. The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. Those licensees that qualify as a ''small entity'' under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov*.

Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code must be entered if known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(2) The size standards apply to the licensee, including all parent companies and affiliates— not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources —not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the ''Amount Billed Represents 50% Proration.'' This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed, instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy '' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq*. NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 02–7114 Filed 3–26–02; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3986/P.L. 107–154

To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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