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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture; Financial Disclosure Requirements for Interests in Revocable Inter Vivos Trusts

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; clarifying amendment.

SUMMARY: The Office of Government Ethics is issuing a final rule to amend the regulation that describes the financial disclosure requirements of the Ethics in Government Act with respect to trusts in which employees, their spouses and their dependent children have certain interests. The amendment clarifies OGE's interpretation that the Act does not require filers of financial disclosure reports to disclose the holdings or income of a revocable inter vivos trust with respect to which they, their spouses or their dependent children have a beneficial interest or receive a discretionary distribution, provided that neither the filer, the filer's spouse, nor the filer's dependent child is the grantor of the trust.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; Telephone: 202–208-8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

I. Revocable Inter Vivos Trusts (''Living Trusts'')

Revocable inter vivos trusts, so-called ''living trusts,'' have become a popular estate planning device in the last several decades. In the typical living trust, the grantor (or settlor) conveys property in trust to a trustee (who is often the grantor) and retains a life estate, with the remainder to go to specified beneficiaries upon the termination of the life estate—all *subject to the power of the grantor* to revoke the trust entirely and to make lessor changes, such as substitutions of beneficiaries or trustees. In this regard, revocable living trusts have less in common with traditional irrevocable trusts, in which the grantor no longer retains substantial control over the administration of the trust or the disposition of the property, than with wills, which remain ambulatory until the death of the testator. Therefore, it is widely recognized that living trusts are ''will substitutes.''

II. Legislative and Regulatory Background of Financial Disclosure Requirements

Section 102(f)(1) of the Ethics in Government Act of 1978, as amended (the Act), sets out the general financial disclosure requirements for beneficiaries of trusts and other financial arrangements:

> each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) of this section with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child. 5 U.S.C. app. 102(f)(1).

The legislative history indicates several related purposes for this provision. First, there was an intent to prevent filers from avoiding reporting requirements ''simply by transferring interests'' to a trust or other entity that would still benefit the filer financially. H.R. Rep. No. 95–642, Part 1, at 40 (1977) (reporting on H.R. 6954). Second, there was concern that situations could arise in which there is an actual or apparent conflict of interest because ''any impact on the financial status of the * * * trust also impacts significantly upon the financial status of the reporting individual.'' *Id.* Third, it appears that the trust provision was included at least in part to deal with the fact that Federal officials already had created a variety of ''blind'' trusts, which did not follow any generally accepted standards, in an attempt to comply with conflict of interest requirements; Congress determined that any such pre-existing trusts should be subject to full disclosure if the trusts could not be brought into compliance with the new uniform standards for qualified blind trusts under the Act. *See* S. Rep. No. 95–170, at 123–124 (1977) (reporting on S. 555).

In 1980, OGE first published its ''final regulations to state in greater detail than the Act the information which must be contained in the financial disclosure report (SF 278).'' 45 FR 69776 (October 21, 1980). Included in those regulations was a provision stating in greater detail what kinds of interests in trusts and estates needed to be reported under the Act. Although the Act itself did not specifically address the distinction between vested and nonvested beneficial interests, the OGE regulation specified that nonvested interests in an estate need not be reported and that nonvested interests in certain trusts needed to be evaluated on a case-by-case basis in consultation with OGE. *See* 45 FR 69784. In 1992, this regulation was amended to provide even greater detail with respect to those interests in trusts that were deemed reportable under the Act. *See* 57 FR 11800 (April 7, 1992). In particular, nonvested beneficial interests were excluded altogether, and a definition of vested interests was provided. *See* 5 CFR 2634.310(a)(2). Although there is no discussion of the subject of nonvested interests in the preambles to these two rules, OGE clearly recognized that the statutory phrase ''beneficial interest in principal or income'' should not be read so broadly as to require the public disclosure of interests the enjoyment of which is so speculative and uncertain: ''the uncertainty of the right of enjoyment * * * differentiates a 'vested' and a 'nonvested' interest.'' 5 CFR 2634.310(a)(2). Furthermore, the reporting of nonvested interests would not further the statutory purpose of disclosing interests that pose a potential conflict of interest, because OGE determined that such interests generally are too uncertain to implicate the financial conflict of interest statute, 18 U.S.C. 208. *See* OGE's Public Financial Disclosure: A Reviewer's Reference 7–30 revised (1996), which is available in the publications section of the OGE Web site (http://www.usoge.gov).

On a related subject, OGE also has provided guidance concerning the reporting of potential interests as a beneficiary under a will. Of particular

relevance, OGE determined that section 102(f)(1) of the Act and 5 CFR 2634.310 do not require filers to report the holdings and income of an estate of a living person just because they are named as beneficiaries under that person's will. *Id.* The Office of Government Ethics concluded that any potential beneficial interest created by the will of a living person is not vested, within the meaning of § 2634.310(a)(2). Likewise, OGE has determined that an employee does not have a disqualifying financial interest, under 18 U.S.C. 208(a), as a result of being named a beneficiary in a will of a person still living; in such cases, ''the employee's interest in the assets to be distributed under the will is merely speculative since he may never inherit them.'' 60 FR 47207, 47209 (September 11, 1995) (preamble to OGE's proposed financial conflict of interest regulation subsequently codified at 5 CFR part 2640).

III. Treatment of Revocable Living Trusts Under Financial Disclosure Requirements

Until now, OGE's regulations and other written guidance have not explicitly addressed the reporting requirements of beneficiaries under revocable living trusts. However, the approach taken in this final rule is consistent with, and follows from, OGE's prior treatment of nonvested interests in trusts and estates, including OGE's prior treatment of beneficiaries under the will of a living testator.

As a technical matter, it may be open to debate whether a remainder interest in a revocable living trust best should be viewed as vested or nonvested. *Compare Randall* v. *Bank of America National Trust and Savings Ass'n.*, 119 P.2d 754 (Cal. App. 1941) (vested), *with Bezzini* v. *Department of Social Services,* 715 A.2d 791 (Conn. App. 1998) (not vested interest, but mere expectancy). Nevertheless, OGE finds it unnecessary to settle this technical question, in view of the fact that revocable living trusts clearly have evolved into widely accepted will substitutes. The Office of Government Ethics has determined, for purposes of section 102(f)(1) of the Act, that any ''interest'' in the remainder of a revocable living trust is just as speculative as the mere expectancy enjoyed by the beneficiary of a living testator. The Office of Government Ethics sees little connection between the purposes of section 102(f)(1), as described above, and the disclosure of expectations that are so speculative and subject to the complete control of someone other than the filer, the filer's spouse or the filer's dependent children. Moreover, such disclosures necessarily would reveal the interests—and estate planning decisions—of persons beyond the filer and the filer's own spouse and dependent children, thus intruding unnecessarily into the private affairs of persons beyond the ordinary scope of financial disclosure under the Act.

Therefore, the final rule adds a note indicating that nothing in § 2634.310 requires the reporting of the holdings or income of a revocable living trust with respect to which the reporting individual has only a remainder interest. Under the language of this note, it is not necessary to determine whether the remainder is vested or nonvested. However, the note makes clear that filers are not excused from reporting the holdings and income of a revocable trust if the filer—or the filer's spouse or dependent child—also is the grantor of the trust. As should be clear from the discussion above, the grantor of a revocable living trust retains such rights of control and enjoyment with respect to the trust property that OGE must view the grantor as the true owner of the property; OGE believes this to be the case whether or not the grantor actually receives any distribution of trust income and whether or not the grantor actually serves as trustee.

The new note also provides that nothing in § 2634.310 requires the reporting of holdings or income of a revocable living trust from which the reporting individual receives any discretionary distribution, provided again that the filer (or the filer's spouse or dependent child) is not the grantor. It is true that section 102(f)(1) of the Act requires the disclosure of trusts ''from which income is received'' by the reporting individual, and that section 109(7) of the Act defines ''income'' as including ''income from an interest in an estate or trust.'' However, OGE does not view discretionary distributions to a beneficiary under a revocable living trust as income within the meaning of these provisions. In OGE's view, such a discretionary distribution is no different from a gift, because the distribution is made at the pleasure of the grantor. For purposes of financial disclosure, OGE sees no meaningful distinction between, for example, a gift of money from a filer's parent and a discretionary distribution of money from the parent's revocable living trust. The Act clearly treats income and gifts separately, and gifts are subject to different reporting requirements (and exclusions) than those found in section 102(f). *Compare* 5 U.S.C. app. 102(a)(1) (income), *with* section 102(a)(2) (gifts).

OGE emphasizes that nothing in the final rule changes the reporting requirements with respect to irrevocable trusts. In this connection, it should be noted that revocable living trusts themselves may become irrevocable upon the occurrence of certain events, such as the death of the grantor or circumstances specified in the trust instrument or State law.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, public comment procedures, and 30-day delay in effectiveness as to this revision. The notice, comment, and delayed effective date are being waived because this minor amendment to OGE financial disclosure regulations is an interpretative rule clarifying OGE's view concerning the scope of section 102(f)(1) of the Ethics in Government Act. Furthermore, it is in the public interest that this amendment become effective promptly, because the amendment has the effect of relieving an unnecessary burden on filers of financial disclosure reports.

Executive Order 12866

In promulgating this final rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, since it is not deemed ''significant'' thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this final rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has submitted a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: May 24, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.310 is amended by adding a note following paragraph (a)(2) to read as follows:

§ 2634.310 Trusts, estates, and investment funds.

(a) * * *

Note to paragraph (a): Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a ''living trust'') with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

* * * * *

[FR Doc. 02–13734 Filed 5–30–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–36–AD; Amendment 39–12766; AD 2002–11–05]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–400, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–802, and AT–802A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2001–10–04 R1, which lowered the safe life for the wing lower spar cap on certain Air Tractor, Inc. (Air Tractor) AT–400, AT–500, and AT–800 series airplanes. AD 2001–10–04 R1 resulted from numerous reports of cracks in the 3/8-inch bolthole of the wing lower spar cap on the affected airplanes. This AD retains the safe life for the wing lower spar cap and requires you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification in order to detect and correct any crack in a bolthole before it extends to the modified center section of the wing. This AD further reduces the safe life for certain Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets and removes the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes from the applicability. We are issuing another AD action to cover these airplanes. The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

DATES: This AD becomes effective on July 12, 2002.

The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulation as of June 8, 2001 (66 FR 27014, May 16, 2001).

ADDRESSES: You may get the service information referenced in this AD from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801; telephone: (800) 893–1420 or (701) 774–0230; facsimile: (701) 572–2602. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–36–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: Direct all questions to:

—For airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

—For certain Models AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA Taken Any Action to This Point?

Several reports of cracked wing lower spar caps on Air Tractor AT–500 series airplanes caused the manufacturer (Air Tractor) to recalculate the fatigue life of the wing lower spar cap on Air Tractor AT–400, AT–500, and AT–800 series airplanes. One report was of an accident where the wing separated from the

airplane during flight. The cracks are originating in the outboard 3/8-inch bolthole of the wing lower spar cap. To address this condition, FAA issued AD 2001–10–04, Amendment 39–12230 (66 FR 27014, May 16, 2001), to lower the safe life for the wing lower spar cap on Air Tractor AT–400, AT–500, and AT–800 series airplanes.

AD 2001–10–04 also allowed for inspection, using eddy current methods, of the wing lower spar cap for airplanes that are at or over the lower safe life and parts are not available. Operation of the airplane was not allowed if cracks were found and inspections had to be terminated when parts become available or after three repetitive inspections were done.

AD 2001–10–04 superseded AD 2000–14–51, Amendment 39–11837 (65 FR 46567, July 31, 2000). AD 2000–14–51 required inspection of the wing lower spar cap for cracks on Air Tractor Models AT–501, AT–502, and AT–502A airplanes, and modification or replacement of any cracked wing lower spar cap.

We inadvertently included certain AT–800 series airplanes in the Applicability of AD 2001–10–04. The AD should not have affected the AT–800 series airplanes equipped with the factory-supplied part number 80540 computerized fire gate. Therefore, we revised AD 2001–10–04 to incorporate this change. AD 2001–10–04 R1, Amendment 39–12247, was published in the **Federal Register** on June 4, 2001 (66 FR 29900).

What Has Happened Since AD 2001–10–04 R1 To Initiate This Action?

In response to AD 2001–10–04 R1, FAA received a comment from the National Transportation Safety Board that recommended an eddy-current inspection requirement immediately prior to the accomplishment of the two-part modification described in Snow Engineering Service Letters #202 or #203, both Revised March 26, 2001, as applicable. This is to eliminate the possibility that a crack existing in a bolt hole prior to the modification is still present after accomplishing the modification. Prior to the modification, any crack present will be larger than it would appear after the outermost bolt holes are enlarged. This makes the crack easier to detect and gives the mechanic an area to concentrate on any post-modification inspections.

Additional analysis also indicates a higher wing root bending moment, which reveals the need to further reduce the safe life for certain AT–400 and AT–500 series airplanes with a certain configuration. Airplanes with this configuration either incorporate or have incorporated Marburger Enterprises, Inc. winglets on the wing lower spar cap. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA. We have developed criteria for determining what the new safe life will be for airplanes that either incorporate or have incorporated these winglets.

What Is The Potential Impact if FAA Took No Action?

This condition could result in fatigue cracks in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

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 Air Tractor, Inc. (Air Tractor) AT–400, AT–500, and AT–800 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 27, 2001 (66 FR 66823). The NPRM proposed to supersede AD 2001–10–04 R1 with a new AD that would retain the safe life and would require you to eddy-current inspect the wing lower spar cap immediately prior to the replacement/modification in order to detect and correct any crack in a bolthole before it extends to the modified center section of the wing. The NPRM also proposed to further reduce the safe life for AT–400 and AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

Was the Public Invited To Comment on the NPRM?

The FAA encouraged interested persons to participate in the making of this amendment. In addition to the comments, we received reports of several cracks originating in the outboard 3/8-inch hole of the main spar lower cap on Air Tractor Models AT–502, AT–502A, AT–502B, and AT–503A airplanes at hours time-in-service (TIS) lower than the established safe life.

Based on this information, we have determined that:

—The safe life on Models AT–502, AT–502A, AT–502B, and AT–503A airplanes should be further reduced;

—These airplanes should be removed from the NPRM; and

—Final rule; request for comments (immediately adopted rule) AD action should be taken to address this condition.

We received one comment in favor of the NPRM as written. The following presents other comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change Step 8 of the Winglet Calculation

What Is the Commenter's Concern?

Several commenters state that Step 8 of the Appendix to the proposed AD gives an overly conservative safe life for airplanes with the Marburger winglets installed when compared to that recommended by Air Tractor. The commenters recommend that FAA revise this calculation to be more in line with Air Tractor's recommendation.

What Is FAA's Response to the Concern?

After further evaluating this step in the calculation, we concur that Step 8 results in a more conservative safe life than we intended. We have modified these instructions for computing the safe life of the airplanes with the winglets installed. These modified instructions are included in the Appendix to this AD.

The accomplishment of these instructions will provide an increase in the safe life of the affected airplanes over that proposed in the NPRM. Therefore, the burden upon the public is reduced and there is no regulatory requirement for FAA to solicit additional public comments.

Comment Issue No. 2: Allow Repetitive Inspections Instead of Mandatory Modification

What Is the Commenter's Concern?

One commenter recommends repetitive inspections provided no cracks are found instead of mandatory modification as proposed in the NPRM and required by AD 2001–10–04 R1. The commenter states that this would reduce the economic impact on operators and minimize the risk of reduced agricultural production if the safe life limit is reached during the agricultural spraying season.

What Is FAA's Response to the Concern?

Although we concur that repetitive inspections may reduce the economic impact and minimize the risk of reduced agricultural production, this will not meet the safety intent of the AD. The FAA has determined that reliance on critical repetitive inspections carries an unnecessary safety risk when parts replacement or modifications exist. In determining what inspections are critical, FAA

considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

We have included a provision for an alternative method of compliance that allows for repetitive 400-hour time-in-service (TIS) inspections up to 1,200 hours TIS after the safe life limit is reached. However, the replacement/modification must be scheduled. This will allow operators to continue operating during the agricultural spraying season.

We have not changed the final rule AD based on this comment.

Comment Issue No. 3: Incorporate One or More Proposed Options Instead of the Required Life Limits for Airplanes with Winglets

What Is the Commenter's Concern?

One commenter opposes the required life limits for the affected airplanes with Marburger winglets installed because the commenter believes that there are other alternatives. The commenter believes that accomplishing one or more of the following options will meet the safety intent of the AD for those affected airplanes with winglets installed:

—Require a takeoff weight limitation that would include a placard and airplane flight manual changes. This weight reduction would offset increased wing bending moments due to the winglet installation;

—Place a maximum maneuver load factor limit (n_z) limitation to reduce the maximum wing bending moment and alleviate the effects of the winglet installation;

—Incorporate a damage tolerance-based inspection program. This program could be based on the initial inspection and subsequent 400-hour TIS inspections detailed in the alternative method of compliance in AD 2001–10–04 R1 and the NPRM and the Snow Engineering service letters; and/or

—Incorporate an inspection program and allow cold-working or reaming of the area where small cracks are found. The inspections could be based on the initial inspection and subsequent 400-hour TIS inspections detailed in the alternative method of compliance in AD 2001–10–04 R1 and the NPRM and specified in the Snow Engineering service letters.

What Is FAA's Response to the Concern?

We do not concur with incorporating any of these alternatives for the following reasons:

—Takeoff weight limitation: The FAA has determined that a weight placard limitation is not a reliable method of reducing wing root bending in airplanes utilized in CAM 8 operations. CAM 8 allows for the operation of restricted category agricultural airplanes at weights higher than that specified in the type certification data sheet (TCDS). To effectively alleviate fatigue spectrum loading, any weight limitation must reduce the typical or average weight seen in operation. We have determined that a maximum weight placard will not reliably reduce the fatigue spectrum loading the CAM 8 agricultural operations;

—Maximum Maneuver Load Factor Limits (n_z): These limits would have little effect on the fatigue loading spectrum seen in operation. Fatigue damage accumulates due to maneuvering, gusts, and ground load occurrences. The ground-air-ground cycle also contributes to fatigue damage. The aerial application spectrum displayed in DOT/FAA/CT–91–20 ''General Aviation Aircraft—Normal Acceleration Data Analysis and Collection Project'' shows only one occurrence of limit load factor in every 16,500 nautical miles flown. It also shows only one occurrence of 90 percent of limit load factor in every 3,300 nautical miles flown. Based on this, we have determined that reducing the maximum maneuver limit load factor would affect only a small percentage of fatigue damage and would not appreciably affect the fatigue safe life;

—Damage tolerance-based inspection program: Damage tolerance and service history-based inspection programs are acceptable methods to ensure continuing structural integrity. However, the commenter does not provide adequate substantiating data to justify an inspection-based system instead of the proposed safe life approach. Such a program should include a detailed crack growth analysis with a threshold or initial inspection time and repetitive inspection intervals. Such intervals would be based on the crack growth analysis. Service history-based inspection programs should be based on an extensive review and statistical analysis of the existing fleet's service experience. The commenter provides no substantiating data and refers only to the inspections proposed in the NPRM and required by AD 2001–10–04 R1. These inspections are limited in duration and used only to provide relief in the event that repair or replacement parts are not available; and

—Repair small cracks through cold-working or reaming the affected area: This is already allowed in limited capacity. Snow Engineering Service Letter #197, which is referenced in the NPRM, specifies drilling the bolt hole to the next larger size if a crack is detected during the eddy-current inspection. If a crack is still detected after the hole is drilled to the next larger size, the service bulletin specifies replacing the cracked part. The FAA infers that the commenter wants this concept used with an inspection program instead of the mandatory safe life modification/replacement program. As previously discussed, this would not meet the safety intent of the AD.

We have not changed the final rule (after NPRM) AD based on this comment.

Comment Issue No. 4: Modify the Winglet Usage Factor for Certain Model AT–502A Airplanes

What Is the Commenter's Concern?

One commenter states that certain Model AT–502A airplanes are equipped with a modification commonly known as the ''Hoerner Tip.'' The commenter suggests that FAA change the winglet usage factor for these airplanes.

What Is FAA's Response to the Concern?

We concur. Later serial numbers of the Model AT–502A airplanes should have a lower winglet usage factor. As discussed earlier, we are initiating final rule; request for comments (immediately adopted rule) AD action to further reduce the safe life of the Models AT–502, AT–502A, AT–502B, and AT–503A airplanes. We will take the commenter's concern into consideration when preparing this AD.

We have not changed the final rule (after NPRM) AD based on this comment.

Comment Issue No. 5: Reduce Winglet Usage Factor for All Airplanes

What Is the Commenter's Concern?

One commenter recommends that FAA reduce the winglet usage factor for all airplanes. This recommendation is based on the weight usage penalty used on Dromader M–18 airplanes compared to the winglet usage factors on the affected Air Tractor airplanes.

What Is FAA's Response to the Concern?

We do not concur. We extensively reviewed the safe life limits specified in the Snow Engineering service letters along with the substantiating

engineering analysis. We are confident in Air Tractor's relative analysis between the baseline airplanes and those modified with the Marburger winglet STC.

Relative fatigue life comparisons between different airplane models are difficult when the airplanes operate in different regions of the fatigue S–N curve, especially when even later serial numbers of the same model may operate at different stress levels. Relative comparisons based on ratios (as the commenter performed) assume a linear or ''one-to-one'' relationship between operating stress and fatigue life. When the operating stress of the two airplanes is significantly different, this ''one-to-one'' relationship assumption is inaccurate.

We have not changed the final rule (after NPRM) AD based on this comment.

Comment Issue No. 6: Use Configuration Changes To Reduce the Aerodynamic Effect of the Winglet Installation

What Is the Commenter's Concern?

One commenter suggests using airplane configuration changes to reduce the aerodynamic effect of the winglet installation and increase the inertia relief available from the winglet installation. This includes winglet incidence, flap droop, and ballast weight in the winglet to offset the increased wing bending moments due to the winglet installation.

What Is FAA's Response to the Concern?

While we acknowledge that configuration changes may successfully offset the effect of the winglet installation on the wing bending moments, the commenter provides no engineering data to specifically show the changes and substantiate reduced aerodynamic effect. The commenter may send this information to FAA at any time for consideration of an alternative method of compliance to the AD.

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 the change in the winglet safe life calculation, the removal of certain airplanes from the applicability, and minor editorial corrections. We have determined that the change, removal, and 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 1,179 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 inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours at $60 per hour = $120	No parts required for inspection	$120	$141,480

We estimate the following costs to accomplish the replacement/modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours at $60 per hour = $7,200	$4,300	$11,500	$13,558,500

What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2001–10–04 R1?

AD 2001–10–04 R1 already established the safe life for the lower wing spar cap on the affected airplanes. Therefore, the replacement/modification is already required through that AD. The only difference in the cost impact upon the public of this AD and AD 2001–10–04 R1 is the cost for the eddy-current inspection upon replacement and the further safe life reduction for those AT–400 and AT–500 series airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

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 removing Airworthiness Directive (AD) 2001–10–04 R1, Amendment 39–12247 (66 FR 29900, June 4, 2001), and by adding a new AD to read as follows:

2002–11–05 Air Tractor, Inc.: Amendment 39–12766; Docket No. 2001–CE–36–AD.

(a) *What airplanes are affected by this AD?* This AD applies to certain Models AT–400, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–802, and AT–802A airplanes. Use paragraph (a)(1) of this AD for affected airplanes that do not incorporate and never have incorporated winglets. Use paragraph (a)(3) of this AD for certain Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets.

(1) The following presents airplanes (certificated in any category) that are affected by this AD, along with the new safe life (presented in hours time-in-service (TIS)) of the wing lower spar cap for all affected airplane models and serial numbers:

Model	Serial numbers	Safe life
AT–400	all serial numbers beginning with 0416	13,300 hours TIS.
AT–401	0662 through 0951	10,757 hours TIS.
AT–401B	0952 through 1014 and 1016 though 1020	6,948 hours TIS.
AT–401B	1015 and 1021 through 1124	7,777 hours TIS.
AT–402	0694 through 0951	7,440 hours TIS.
AT–402A	0738 through 0951	7,440 hours TIS.
AT–402A	0952 through 1020	4,589 hours TIS.
AT–402A	1021 through 1124	5,268 hours TIS.
AT–402B	0966 through 1020	4,589 hours TIS.
AT–402B	1021 through 1124	5,268 hours TIS.
AT–501	0002 through 0061	4,531 hours TIS.
AT–501	all serial numbers beginning with 0062	7,693 hours TIS.
AT–802	0001 through 0059 except those equipped with the factory-supplied part number 80540 computerized fire gate.	4,132 hours TIS.
AT–802	0060 through 0091 except those equipped with the factory-supplied part number 80540 computerized fire gate.	4,188 hours TIS.
AT–802	0092 through 0101 except those equipped with the factory-supplied part number 80540 computerized fire gate.	8,163 hours TIS.
AT–802A	0003 through 0059 except those equipped with the factory-supplied part number 80540 computerized fire gate.	4,969 hours TIS.
AT–802A	0060 through 0091 except those equipped with the factory-supplied part number 80540 computerized fire gate.	4,531 hours TIS.
AT–802A	0092 through 0101 except those equipped with the factory-supplied part number 80540 computerized fire gate.	8,648 hours TIS.

Note 1: This AD still applies to those airplanes that have converted between fire fighting and agricultural dispersal.

(2) If piston powered aircraft have been converted to turbine power, you must use the limits for the corresponding serial number turbine-powered aircraft.

(3) The following presents airplanes (certificated in any category) that could incorporate or could have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA. Use the winglet usage factor in the table in this paragraph, the safe life specified in paragraph (a)(1) of this AD, and the instructions included in the Appendix to this AD to determine the new safe life of these airplanes:

Model	Serial numbers	Winglet usage factor
AT–401	0662 through 0951	1.6

Model	Serial numbers	Winglet usage factor
AT–401B	0952 through 1014 and 1016 though 1020	1.1
AT–401B	1015 and 1021 through 1124	1.1
AT–402	0694 through 0951	1.6
AT–402A	0738 through 0951	1.6
AT–402A	0952 through 1020	1.1
AT–402A	1021 through 1124	1.1
AT–402B	0966 through 1020	1.1
AT–402B	1021 through 1124	1.1
AT–501	0002 through 0061	1.6
AT–501	all serial numbers beginning with 0062	1.6

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent fatigue cracks from occurring in the wing lower spar cap before the established safe life is reached. Fatigue cracks in the wing lower spar cap, if not detected and corrected, could result in the wing separating from the airplane during flight.

Note 2: The 10-hour TIS compliance time is maintained from AD 2001–10–04 R1.

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

Actions	Compliance	Procedures
(1) Modify the applicable aircraft records (logbook) as follows to show the reduced safe life for the wing lower spar cap (use the information from the table in paragraph (a)(1) of this AD and utilize the information in paragraph (a)(3) of this AD and the Appendix to this AD, as applicable. (i) For the affected Models AT–802 and AT–802A airplanes: update the Owners Manual, Section 6—Airworthiness Limitations, Life Limited Parts. (ii) For all affected airplanes other than Models AT–802 and AT–802A airplanes, incorporate the following into the Aircraft Logbook: ''In accordance with this AD, the wing lower spar cap is life limited to _____.'' Insert the applicable safe life number from the applicable tables in paragraphs (a)(1) and (a)(3) and the Appendix of this AD. (iii) If, as of the time of the logbook entry requirement of paragraph (d)(1) of this AD, your airplane is over or within 10 hours of the safe life, an additional 10 hours TIS is allowed to accomplish the replacement/modification.	Accomplish the logbook entry within the next 10 hours TIS after July 12, 2002 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the aircraft records as specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Accomplish the actual replacement/modification when the safe life is reached in accordance with Snow Engineering Service Letter #202 or #203, both Revised March 26, 2001, as applicable. The owner/operator may not accomplish the replacement/modification, unless he/she holds the proper mechanic authorization.

Actions	Compliance	Procedures
(2) If you have ordered parts from the factory when it is time to replace the wing lower spar cap (as required when you reach the established safe life), but the parts are not available, you may eddy-current inspect the wing lower spar cap. These inspections are allowed until one of the following occurs, at which time the replacement/modification must be accomplished: (i) Crack(s) is/are found; (ii) Parts become available from the manufacturer; or (iii) Not more than three inspections or 1,200 hours TIS go by: the first inspection would have to be accomplished upon accumulating the safe life; the second inspection would have to be accomplished within 400 hours TIS after accumulating the safe life; the third inspection would have to be accomplished 400 hours TIS after the second inspection; and the replacement/modification would have to be accomplished within 400 hours TIS after the third inspection (maximum elapsed time would be 1,200 hours TIS).	Inspect prior to further flight after ordering the parts and thereafter at intervals not to exceed 400 hours TIS until one of the criteria in paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD are met.	In accordance with the procedures in Snow Engineering Service Letter #202 or #203, both Revised March 26, 2001, as applicable.
(3) Eddy-current inspect the wing lower spar cap in order to detect any crack before it extends to the modified center section of the wing and repair that crack or replace the wing section. This replacement must be accomplished by a Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410. The inspection must be accomplished by one of the following: (i) a Level 2 or Level 3 inspector that is certified for eddy-current inspection using the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410; or (ii) A person authorized to perform AD work who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.	Immediately prior to the replacement/modification required when you reach the new safe life. For airplanes that had this replacement/modification accomplished in accordance with either AD 2001–10–04 or AD 2001–10–04 R1, accomplish this inspection and any necessary corrective action within the next 400 hours TIS after July 12, 2002 (the effective date of this AD), unless already accomplished (have the mechanic who accomplished the work mark the logbook accordingly).	In accordance with the procedures in Snow Engineering Service Letter #202 or #203, both Revised March 26, 2001, as applicable.

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

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

(ii) The Manager, Fort Worth or Los Angeles Airplane Certification Office (ACO), as applicable, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector. The inspector may add comments before sending it to the Manager, Fort Worth or Los Angeles ACO.

(2) Alternative methods of compliance approved for AD 2001–10–04 and/or AD 2000–14–51 are not considered approved for this AD.

(3) Alternative methods of compliance approved for AD 2001–10–04 R1 are considered approved for this AD.

Note 3: This AD applies to each airplane identified in paragraphs (a)(1) and (a)(3) 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) *Are there any alternative methods of compliance already approved or being considered for this AD?* The FAA may approve, as an alternative method of compliance, inspection of the wing lower spar cap. You must submit the request in accordance with the procedures in paragraph (e) of this AD and adhere to the following:

(1) If you are over or within 10 hours TIS of the safe life for the wing lower spar cap and you have ordered parts and scheduled a date for the replacement/modification, but having the replacement/modification done on this date grounds the airplane, accomplish the following:

(i) Inspect the wing lower spar cap within 10 hours TIS after approval of the alternative method of compliance;

(ii) Reinspect thereafter at intervals not to exceed 400 hours TIS until either cracks are found, the date of the scheduled replacement/modification occurs, or 1,200 hours TIS after the initial inspection are accumulated, whichever occurs first; and

(iii) Accomplish the inspections in accordance with the procedures in Snow Engineering Service Letter #202 or #203, both Revised March 26, 2001, as applicable.

(2) Submit the following to the Fort Worth or Los Angeles ACO, as applicable, using the procedures described in paragraph (e) of this AD:

(i) The airplane model serial number designation, and airplane registration number (N-number);

(ii) The number of hours TIS on the airplane;

(iii) The scheduled date for the replacement/modification; and

(iv) The name and location of the authorized repair shop.

(3) For more information about this issue, contact:

(i) For the airplanes that do not incorporate and never have incorporated Marburger Enterprises, Inc. winglets: Rob Romero, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5102; facsimile: (817) 222–5960; and

(ii) For the airplanes that incorporate or have incorporated winglets: John Cecil, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5228; facsimile: (562) 627–5210.

(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 provided that the following is adhered to:

(1) Only operate in day visual flight rules (VFR) only.

(2) Ensure that the hopper is empty.

(3) Limit airspeed to 135 miles per hour (mph) indicated airspeed (IAS).

(4) Avoid any unnecessary g-forces.

(5) Avoid areas of turbulence.

(6) Plan the flight to follow the most direct route.

(h) *Are any service bulletins incorporated into this AD by reference?* Replacement and inspection actions required by this AD must be done in accordance with Snow Engineering Service Letter #202 or 203, both Revised March 26, 2001, as applicable. The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of June 8, 2001 (66 FR 27014, May 16, 2001). You can get copies from Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374; or Marburger Enterprises, Inc., 1227 Hillcourt, Williston, North Dakota 58801. 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.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2001–10–04 R1, Amendment 39–12247.

(j) *When does this amendment become effective?* This amendment becomes effective on July 12, 2002.

Appendix to AD 2002–11–05

The following provides procedures for determining the safe life for those Models AT–401, AT–401B, AT–402, AT–402A, AT–402B, and AT–501 airplanes that incorporate or have incorporated Marburger Enterprises, Inc. winglets. These winglets are installed in accordance with Supplemental Type Certificate (STC) SA00490LA.

What if I removed the Marburger winglets prior to further flight after the effective date of this AD or prior to the effective date of this AD:

1. Review your airplane's logbook to determine your airplane's time in service (TIS) with winglets installed per Marburger Enterprises STC SA00490LA. This includes all time spent with the winglets currently installed and any previous installations where the winglet was installed and later removed.

Example: A review of your airplane's logbook shows that you have accumulated 350 hours TIS since incorporating the Marburger STC. Further review of the airplane's logbook shows that a previous owner had installed the STC and later removed the winglets after accumulating 150 hours TIS. Therefore, your airplane's TIS with the winglets installed is 500 hours.

If you determine that the winglet STC has never been incorporated on your airplane, then your safe life is presented in paragraph (a)(1) of this AD. Any future winglet installation will be subject to a reduced safe life per these instructions.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–401B, serial number 1022. From paragraph (a)(1) of this AD, the safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, serial number 1022 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–401B, serial number 1022. From paragraph (a)(3) of this AD, your winglet usage factor is 1.1.

4. Adjust the winglet TIS to account for the winglet usage factor. Multiply the winglet TIS (result of Step 1 above) by the winglet usage factor (result of Step 3 above).

Example: Winglet TIS is 500 hours X a winglet usage factor of 1.1. The adjusted winglet TIS is 550 hours.

5. Calculate the winglet usage penalty. Subtract the winglet TIS (result of Step 1 above) from the adjusted winglet TIS (result of Step 4 above).

Example:

$$\text{Adjusted winglet TIS} - \text{the winglet TIS} = \text{winglet usage penalty.}$$
$$(550 \text{ hours}) - (500 \text{ hours TIS}) = (50 \text{ hours TIS}).$$

6. Adjust the safe life of your airplane to account for winglet usage. Subtract the winglet usage penalty (result of Step 5 above) result from the unmodified safe life from paragraph (a)(1) of this AD (result of Step 2 above.).

Example:

$$\text{Unmodified safe life} - \text{winglet usage penalty} = \text{adjusted safe life.}$$
$$(7{,}777 \text{ hours TIS}) - (50 \text{ hours TIS}) = (7{,}727 \text{ hours TIS}).$$

7. If you remove the winglets from your airplane prior to further flight or no longer have the winglets installed on your airplane, the safe life of your airplane is the adjusted safe life (result of Step 6 above). Enter this number in paragraph (d)(1)(ii) of this AD and the airplane logbook.

What if I have the Marburger winglet installed as of the effective date of this AD and plan to operate my airplane without removing the winglet?

1. Review your airplane's logbook to determine your airplane's TIS without the winglets installed.

Example: A review of your airplane's logbook shows that you have accumulated 1,500 hours TIS, including 500 hours with the Marburger winglets installed. Therefore, your airplane's TIS without the winglets installed is 1,000 hours.

2. Determine your airplane's unmodified safe life from paragraph (a)(1) of this AD.

Example: Your airplane is a Model AT–401B, serial number 1022. From paragraph (a)(1) of this AD, the safe life of your airplane is 7,777 hours TIS.

All examples from hereon will be based on the Model AT–401B, serial number 1022 airplane.

3. Determine the winglet usage factor from paragraph (a)(3) of this AD.

Example: Again, your airplane is a Model AT–401B, serial number 1022. From paragraph (a)(3) of this AD, your winglet usage factor is 1.1.

4. Determine the potential winglet TIS. Subtract the TIS without the winglets installed (result of Step 1 above) from the unmodified safe life (result of Step 2 above).

Example:

Unmodified safe life – TIS without winglets = Potential winglet TIS.

(7,777 hours TIS) – (1,000 hours TIS) = (6,777 hours TIS).

5. Adjust the potential winglet TIS to account for the winglet usage factor. Divide the potential winglet TIS (result of Step 4 above) by the winglet usage factor (result of Step 3 above).

Example:

Potential winglet TIS ÷ Winglet usage factor = Adjusted potential winglet TIS.

(6,777 hours TIS) ÷ (1.1) = (6,155 hours TIS).

6. Calculate the winglet usage penalty. Subtract the adjusted potential winglet TIS (result of Step 5 above) from the potential winglet TIS (result of Step 4 above).

Example:

Potential winglet TIS – Adjusted potential winglet TIS = Winglet usage penalty.

(6,777 hours TIS) – (6,155 hours TIS) = (622 hours TIS).

7. Adjust the safe life of your airplane to account for the winglet installation. Subtract the winglet usage penalty (result of Step 6 above) from the unmodified safe life from paragraph (a)(1) of this AD (the result of Step 2 above).

Example:

Unmodified safe life – Winglet usage penalty = Adjusted safe life.

(7,777 hours TIS) – (622 hours TIS) = (7.155 hours TIS).

8. Enter the adjusted safe life (result of Step 7 above) in paragraph (d)(1)(ii) of this AD and the airplane logbook.

What if I install or remove the Marburger winglet from my airplane in the future?

If, at anytime in the future, you install or remove the Marburger winglet STC from your airplane, you must repeat the procedures in this Appendix to determine the airplane's safe life.

Issued in Kansas City, Missouri, on May 23, 2002.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13609 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–38–AD; Amendment 39–12714; AD 2002–08–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain Boeing Model 777–200 and –300 series airplanes. That AD currently requires a one-time torque check (inspection) of the bolts that attach the pivot fittings to the horizontal stabilizer through the upper and lower titanium straps, to determine if the bolts are adequately torqued, and follow-on actions. This document corrects the requirements of the existing AD by adding an option to allow operators a 30-day grace period for submission of the report required by paragraph (d) of the AD. This correction is prompted by communication received from the manufacturer that the current requirements of the AD could put operators out of compliance.

DATES: Effective May 3, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 3, 2002 (67 FR 19104, April 18, 2002).

FOR FURTHER INFORMATION CONTACT: John Craycraft, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2782; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On April 11, 2002, the Federal Aviation Administration (FAA) issued AD 2002–08–06, amendment 39–12714 (67 FR 19104, April 18, 2002), applicable to certain Boeing Model 777–200 and –300 series airplanes. That AD requires a one-time torque check (inspection) of the bolts that attach the pivot fittings to the horizontal stabilizer through the upper and lower titanium straps, to determine if the bolts are adequately torqued, and follow-on actions. The actions required by that AD are intended to prevent failure of the pivot fittings, which could result in loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Need for the Correction

Information obtained recently from the manufacturer indicates that the compliance time for the reporting requirement in paragraph (d) of AD 2002–08–06 does not allow operators who have already done the inspection required by paragraph (a) of the AD enough time to submit the required information.

The FAA has determined that a correction to AD 2002–08–06 is necessary. The correction will add an option to allow operators a 30-day grace period for submission of the reporting requirements specified in paragraph (d) of the AD. The correction will add sub-paragraphs (d)(1) and (d)(2) to the AD to include that option.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains May 3, 2002.

Since this action only corrects a current requirement, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–08–06 Boeing: Amendment 39–12714. Docket 2002–NM–38–AD.

Applicability: Model 777–200 and –300 series airplanes as listed in Boeing Alert Service Bulletin 777–55A0013, Revision 1, dated January 31, 2002; certificated in any category.

Note 1: This AD applies to each airplane 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 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 the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pivot fittings of the horizontal stabilizer, which could result in loss of control of the horizontal stabilizer and consequent loss of control of the airplane, accomplish the following:

Torque Check (Inspection)

(a) Within 90 days after the effective date of this AD, do the following inspections of the aft bolts of the pivot fittings attached to the horizontal stabilizer, per the Accomplishment Instructions of Boeing Alert Service Bulletin 777–55A0013, Revision 1, dated January 31, 2002:

(1) Do a torque check (inspection) to determine if the bolts are adequately torqued per the service bulletin.

(2) Do a detailed inspection of the bolt thread protrusion through the nut. Replace any bolt that has less than the chamfer of the bolt or more than three threads protruding through the nut per Steps 6.d. and 6.e. or Steps 7.d. and 7.e. of the Work Instructions of the service bulletin for Group 1 or Group 2 airplanes, as applicable.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: For Group 1 airplanes and Group 2 airplanes with WBnnn variable numbers (where nnn is any three digits), inspections and follow-on actions done before the effective date of this AD per Boeing Service Bulletin 777–55A0013, dated December 19, 2001, are considered acceptable for compliance with the corresponding actions specified in paragraph (a)(1) of this AD.

Follow-On Actions

(3) Do Steps 8. and 9. of the Work Instructions in Part B of the service bulletin, if the torque value of all attachment bolts is found to be within the specified limits, then no further action is required by this AD.

(b) During the inspection required by paragraph (a)(1) of this AD, if the torque value of any attachment bolt is found to be less than or equal to the value specified in Step 4. of the Work Instructions of Boeing Alert Service Bulletin 777–55A0013, Revision 1, dated January 31, 2002: Before further flight, do all actions (includes removing the nut and measuring run-on torque; replacing any nut that does not meet the run-on torque requirements; doing a visual inspection for indications of galling, fretting, and wear; replacing the bolt if any discrepancies are found; and doing an open-hole high frequency eddy current (HFEC) inspection for cracks); as specified in and per Steps 5., 6., and 7., as applicable, of the Work Instructions of Boeing Alert Service Bulletin 777–55A0013, Revision 1, dated January 31, 2002, for Group 1 or Group 2 airplanes, as applicable.

(c) If any cracking is found during the HFEC inspection and the service bulletin specifies contacting Boeing for repair instructions: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Reporting Requirement

(d) After doing the inspections required by paragraph (a) of this AD: Submit a report of the bolt torque values and run-on torque values of the nut, and/or any damaged areas found, to the FAA Certification Management Office—Boeing, ANM–108B, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is done after the effective date of this AD: Submit the report within 10 days after doing the inspection.

(2) For airplanes on which the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance

(e) 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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 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 accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 777–55A0013, Revision 1, dated January 31, 2002. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 3, 2002 (67 FR 19104, April 18, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(h) The effective date of this amendment remains May 3, 2002.

Issued in Renton, Washington, on May 23, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13607 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AWP–18]

Establishment of Class E Airspace; Calipatria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Calipatria, CA. The establishment of a Area Navigation (RNAV) Global Positing System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 08 SIAP to Cliff Hatfield Memorial Airport, Calipatria, CA has made action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Cliff Hatfield Memorial Airport, Calipatria, CA.

EFFECTIVE DATE: 0901 UTC June 13, 2002.

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

SUPPLEMENTARY INFORMATION:

History

On April 29, 2002, the FAA proposed to amend 14 CFR part 71 establishing a Class E airspace area at Calipatria, CA (67 FR 20921). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport, Calipatria, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Calipatria, CA. The establishment of a RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 08 SIAP to Cliff Hatfield Memorial Airport, Calipatria, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120;E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP CA E5 Calipatria, CA [New]

Cliff Hatfield Memorial Airport, CA
(Lat 33°07′47″ N, long. 115°31′18″ W)
Brawley Municipal Airport, CA
(Lat. 32°59′35″ N., long. 115°31′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Cliff Hatfield Memorial Airport; excluding that portion within the Brawley Municipal Airport, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on May 14, 2002.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 02–13710 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736, 738, 740, 742, 745, and 774

[Docket No. 020509118–2118–01]

RIN 0694–AC62

Revisions and Clarifications to the Export Administration Regulations—Chemical and Biological Weapons Controls: Australia Group; Chemical Weapons Convention

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS), formerly the Bureau of Export Administration (BXA), is amending the Export Administration Regulations (EAR) to implement the understandings reached at the October 2001 plenary meeting of the Australia Group (AG). This final rule amends the Commerce Control List (CCL) and the corresponding export licensing provisions in the EAR to: authorize exports and reexports without a license, to most destinations, of medical, analytical, diagnostic, and food testing kits containing small quantities of any chemicals controlled only by the AG (*i.e.*, not also listed on any Schedule to the Chemical Weapons Convention (CWC)), provided that the testing kits meet certain criteria specified in the EAR; clarify the scope of the AG controls that apply to certain genetic elements and genetically modified organisms; establish controls on exports and reexports of critical components of

certain AG-controlled chemical manufacturing equipment, in which all surfaces that come into direct contact with the chemical(s) being processed or contained are made from specified materials; and add Bulgaria to Country Group A:3 (AG participating countries).

This rule also implements three AG intersessional decisions that affect AG controls on valves, freeze-drying equipment, and protective and containment equipment (including protective suits). This rule revises AG controls on valves to include all valves with nominal sizes greater than 1.0 cm in which all surfaces that come into direct contact with the chemical(s) being processed or contained are made from specified materials. The rule revises AG controls on freeze-drying equipment by changing the control threshold for such equipment from a minimum condenser capacity of ''greater than 50 kgs of ice in 24 hours'' to a minimum condenser capacity of ''10 kgs of ice or greater in 24 hours.'' The rule revises AG controls on protective suits to apply to hoods, as well as protective full and half suits, that are dependant upon a tethered external air supply and operate under positive pressure. Suits designed to be worn with self-contained breathing apparatus are excluded from control. Furthermore, the rule clarifies the AG controls that apply to Class III biological safety cabinets and isolators with similar characteristics by including several examples of the types of equipment subject to these controls.

In addition to making the 2001 AG plenary and intersessional changes described above, this rule creates a new entry and restructures several entries on the CCL in order to clarify which mixtures are controlled for CB (chemical/biological: AG-based) or CW (chemical weapons: CWC-based) reasons. The restructuring does not alter the scope of the controls that apply to these mixtures.

This rule also harmonizes AT (anti-terrorism) controls among a number of entries on the CCL that describe chemicals controlled for CB or CW reasons and mixtures that contain these chemicals. Specifically, this rule expands AT controls to apply to all chemicals previously controlled for CW reasons only and to all mixtures that contain these chemicals. This rule further harmonizes the application of AT controls by requiring a license, for AT reasons, to export or reexport mixtures containing chemicals controlled for CB or CW reasons to all of the designated terrorist supporting countries.

In addition, this rule imposes a license requirement for exports to Canada of human pathogens and toxins, animal and plant pathogens, and genetically modified organisms that are controlled for CB reasons. This change harmonizes export controls on biological agents and related technology by requiring a license to export such items to all destinations, worldwide.

Finally, this rule makes two changes related to the CWC requirements in the EAR. First, the rule updates the list of countries that are currently States Parties to the CWC by adding the following countries: Nauru and Uganda. Second, the rule clarifies that a license is required to reexport CWC Schedule 3 chemicals and mixtures controlled on the CCL for CW reasons from a State not Party to the CWC to any other State not Party to the CWC and that applications for such reexports generally will be denied.

DATES: This rule is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: James Seevaratnam, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 501–7900.

SUPPLEMENTARY INFORMATION:

Background

A. Revisions to the EAR Based on the October 2001 Plenary Meeting of the Australia Group

The Bureau of Industry and Security (BIS), formerly the Bureau of Export Administration (BXA), is amending the Export Administration Regulations (EAR) to implement understandings reached at the annual plenary meeting of the Australia Group (AG) chemical and biological weapons nonproliferation control regime that was held in Paris on October 1–4, 2001. The Australia Group is a multilateral forum, consisting of 33 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

This final rule amends the EAR to implement an understanding on test kits that was reached at the October 2001 AG plenary meeting. Specifically, this rule authorizes exports without a license, to most destinations, of medical, analytical, diagnostic, and food testing kits containing small quantities of any chemicals controlled only by the AG, provided that the kits: (1) Are pre-packaged materials of defined composition, (2) are specifically developed, packaged, and marketed for diagnostic, analytical, or public health purposes, and (3) contain no more than 300 grams of any single AG-controlled chemical. In addition, an export license for such test kits continues to be required, to certain destinations and entities, for anti-terrorism (AT) reasons or for other reasons specified in the EAR (*e.g.*, embargoes).

The following license requirements apply to such test kits. Test kits that contain CWC Schedule 1 chemicals continue to be controlled under ECCN 1C350 (note that this rule restructures 1C350.a to control certain Schedule 1 chemicals that are subject to the EAR). These test kits require a license for all destinations, including Canada, for CW reasons, and also require a license to certain destinations for chemical/biological (CB) and anti-terrorism (AT) reasons. Test kits that contain CWC Schedule 2 or 3 chemicals listed in restructured 1C350.b or .c, respectively, are now controlled under new ECCN 1C395 and continue to require a license to States not Party to the CWC, for CB and CW reasons, and to designated terrorist supporting countries (*i.e.*, Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria), for AT reasons. Test kits that contain precursor chemicals listed in restructured 1C350.d, which are not subject to the CW controls described in that ECCN, are controlled under ECCN 1C995 for AT reasons only. This rule also amends Section 742.2 of the EAR by revising the license requirements to reflect the AG understanding on test kits described above.

Participants at the October 2001 AG plenary meeting also reached an understanding to control exports and reexports of critical components of certain AG-controlled chemical manufacturing equipment listed in ECCN 2B350. Specifically, this rule revises ECCN 2B350 to control the following components: (1) Impellers, blades or shafts designed for agitators controlled by 2B350.b; (2) tubes, plates, coils or blocks (cores) designed for heat exchangers or condensers controlled by 2B350.d; (3) liquid distributors, vapor distributors or liquid collectors designed for distillation or absorption columns controlled by 2B350.e; (4) casings (valve bodies) or preformed casing liners designed for valves controlled by 2B350.g; and (5) casing (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for pumps controlled by 2B350.i.

The October 2001 AG plenary meeting also resulted in an understanding concerning the scope of controls on the genetic elements and genetically modified organisms controlled by ECCN 1C353. This rule adds a technical note to ECCN 1C353 to indicate that ''genetic elements include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.''

Finally, this rule amends the EAR to add Bulgaria as the newest participating country in the Australia Group (which now includes a total of 33 countries). Supplement No. 1 to Part 740 (Country Groups) is revised to add Bulgaria to Country Group A:3 (Australia Group) and Supplement No. 1 to Part 738 (Commerce Country Chart) is revised to remove the licensing requirements for Bulgaria under CB Columns 2 and 3 in conformance with the licensing policy that applies to other AG participating countries.

B. Revisions to the EAR Based on Intersessional Decisions by the Australia Group

BIS is amending the EAR to implement three intersessional decisions by the AG, made subsequent to the October 2001 plenary meeting, that affect AG controls on valves, freeze-drying equipment, and protective and containment equipment. This rule revises AG controls on valves by amending ECCN 2B350 to control valves with nominal sizes greater than 1.0 cm in which all surfaces that come into direct contact with the chemical(s) being processed or contained are made from specified materials. The change more clearly defines valves that would pose a concern for proliferation reasons.

This rule also revises AG controls on freeze-drying equipment controlled by ECCN 2B352 by changing the control threshold for such equipment from a minimum condenser capacity of ''greater than 50 kgs of ice in 24 hours'' to a minimum condenser of ''10 kgs of ice or greater in 24 hours.'' As a result of this change, 2B352.e now controls steam sterilizable freeze-drying equipment that has a condenser capacity of 10 kgs of ice or greater, but less than 1,000 kgs of ice, in 24 hours.

In addition, this rule revises AG controls on the protective suits controlled by ECCN 2B352 to apply to hoods, as well as protective full and half suits, that are dependant upon a tethered external air supply and operate under positive pressure. A technical note is added to 2B352.f.1 to exclude from control those suits that are designed to be worn with self-contained breathing apparatus. In addition, this rule clarifies the controls that apply to Class III biological safety cabinets and isolators with similar characteristics by adding, in ECCN 2B352.f.2, several examples of the types of equipment subject to these controls (*e.g.*, flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow)).

C. Restructuring of AG and CWC-Related Entries on the Commerce Control List (CCL)

In addition to implementing the 2001 AG plenary and intersessional changes described above, BIS is amending the EAR by restructuring several entries on the CCL in order to clarify which chemicals and mixtures are controlled for CB (chemical/biological: AG-based) or CW (chemical weapons: CWC-based) reasons. This restructuring does not, by itself, alter the scope of the controls that apply to these chemicals and mixtures. Specifically, this rule amends ECCN 1C350 to reorganize the List of Items Controlled into four categories: (1) 1C350.a, which lists certain AG-controlled chemicals also identified on CWC Schedule 1 and controlled for CB, CW, and AT (anti-terrorism) reasons; (2) 1C350.b, which lists certain AG-controlled chemicals also identified on CWC Schedule 2 and controlled for CB, CW, and AT reasons; (3) 1C350.c, which lists certain AG-controlled chemicals also identified on CWC Schedule 3 and controlled for CB, CW, and AT reasons; and (4) 1C350.d, which lists AG-controlled chemicals controlled for CB and AT reasons only. This rule also amends ECCN 1C350 and ECCN 1C355 to place the description of the mixtures controlled by each entry in the List of Items Controlled for that entry. As part of this change, the mixtures notes for these two ECCNs have been revised to simplify the language describing the license requirements that apply to mixtures containing chemicals controlled by these ECCNs.

This rule also restructures ECCN 1C995 and adds a new ECCN 1C395 to provide greater clarity concerning the license requirements that apply to certain mixtures and test kits containing chemicals controlled by ECCN 1C350. Specifically, ECCN 1C995 is revised to control mixtures and test kits that require a license for AT reasons only. As a result of this change ECCN 1C995 now controls all mixtures that contain AG-controlled chemicals (*i.e.,* chemicals controlled by ECCN 1C350) in concentrations less than the control thresholds specified for mixtures identified in ECCN 1C350, except for those mixtures that contain greater than 10 percent, but less than 30 percent, by weight of any single AG-controlled chemical also identified under Schedule 2 of the CWC. The latter are controlled under new ECCN 1C395, because they require a license, for CB and CW reasons, for export to States not Party to the CWC. ECCN 1C995 continues to control the following mixtures for AT reasons only: (1) Mixtures that contain 10 percent or less, by weight, of any single AG-controlled chemical also identified under Schedule 2 of the CWC, (2) mixtures that contain less than 30 percent by weight of any single AG-controlled chemical also identified under Schedule 3 of the CWC, and (3) mixtures that contain less than 30 percent by weight of any single AG-controlled chemical not also identified under any schedule of the CWC (i.e., AG-controlled chemicals in ECCN 1C350 not also controlled for CW reasons). As noted below (see harmonization of AT controls), ECCN 1C995 is revised by this rule to also control, for AT reasons, mixtures not controlled by ECCN 1C355 that contain chemicals controlled by that ECCN. In addition, ECCN 1C995 controls test kits that contain precursor chemicals listed in 1C350.d, which are not subject to CW controls.

New ECCN 1C395 controls test kits excluded from control under ECCN 1C350.b and .c by License Requirement Note 4 of that ECCN (*i.e.,* test kits containing CWC Schedule 2 or 3 chemicals). These test kits are included in new ECCN 1C395, instead of ECCN 1C995, because they are controlled for CB and CW reasons to States not Party to the CWC. ECCN 1C395 also controls mixtures containing greater than 10 percent, but less than 30 percent, by weight of any single AG-controlled chemical also identified under Schedule 2 of the CWC. These mixtures are controlled under ECCN 1C395 for CB and CW reasons. All items controlled by new ECCN 1C395 require a license, for AT reasons, to designated terrorist supporting countries (*i.e.,* Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria).

This rule amends General Prohibition Seven (Section 736.2(b)(7) of the EAR) and the AG and CWC licensing requirements and policies in Sections 742.2 and 742.18 of the EAR to include references to new ECCN 1C395. The rule also amends the CWC licensing requirements and policies in Section 742.18 of the EAR to include references to mixtures controlled by ECCN 1C350, ECCN 1C355, or new ECCN 1C395.

D. Harmonization of Anti-Terrorism (AT) Controls in the AG and CWC-Related Entries on the Commerce Control List (CCL)

BIS is also amending several AG and CWC-related entries on the CCL to harmonize the application of anti-terrorism (AT) controls among these entries. Specifically, this rule revises ECCN 1C355 to require a license, for AT reasons, to export or reexport any of the chemicals or mixtures controlled by this ECCN to all of the designated terrorist supporting countries (*i.e.,* Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria). Prior to the publication of this rule, the chemicals and mixtures listed in ECCN 1C355 required a license for CW reasons only. This action will have no impact on exports to Cuba, Iran, Iraq, Libya, and Sudan, which are subject to comprehensive trade sanctions, or on exports to Syria and North Korea, which continue to be subject to CW controls.

In addition, this rule revises ECCN 1C995 to harmonize the application of AT controls among ECCNs containing chemicals and chemical mixtures by requiring a license to export or reexport any mixture controlled by ECCN 1C995 to all of the designated terrorist supporting countries. Prior to the publication of this rule, mixtures controlled by ECCN 1C995 that contained chemicals controlled by ECCN 1C350 required a license, for AT reasons, only to Cuba, Libya, North Korea, and Iran. In practice, this action will have no impact on exports to Sudan and Iraq, which are subject to comprehensive trade sanctions, but it may have a slight impact on exports of these mixtures to Syria.

This rule also revises ECCN 1C995 to control, for AT reasons, mixtures not controlled by ECCN 1C355 that contain chemicals controlled by 1C355. Prior to the publication of this rule, these mixtures were classified as EAR99 and generally could be exported to most destinations, except embargoed destinations and entities (*i.e.,* Cuba, Iran, Iraq, Libya, and Sudan), without prior U.S. Government authorization. In practice, this action will have no impact on exports to Cuba, Iran, Iraq, Libya, and Sudan, which are subject to comprehensive trade sanctions, but it may have a slight impact on exports of these mixtures to Syria and North Korea.

In addition, this rule expands AT controls on test kits that were previously controlled under ECCN 1C995, but which are now controlled under ECCN 1C395 (*i.e.,* test kits containing AG-controlled chemicals also identified on CWC Schedule 2 or 3), by requiring a license, for AT reasons, to export these test kits to Iraq. This rule also expands AT controls, to include Iraq, for certain test kits that were previously controlled under ECCN 1C350, but which are now controlled under ECCN 1C995.c (*i.e.,* test kits containing AG-controlled chemicals that are not also controlled for CW reasons). Previously, exports of these test kits required a license, for AT reasons, only to Cuba, Iran, Libya, North Korea, Sudan, and Syria. This action will have no impact on exports of these test kits to Iraq, since that country is subject to comprehensive trade sanctions and a license also continues to be required, for CB and CW reasons, to export these test kits to Iraq.

Finally, this rule revises ECCN 1C350 to expand AT controls to include Iraq. Previously, items controlled by ECCN 1C350 were controlled for AT reasons to all designated terrorist-supporting countries, except Iraq (*i.e.,* Cuba, Iran, Libya, North Korea, Sudan, and Syria).

E. Establishment of Worldwide Export Controls on Certain Australia Group-Controlled Biological Items

This rule also imposes a license requirement for exports to Canada of human pathogens and toxins, animal and plant pathogens, and genetically modified organisms that are controlled for CB reasons under ECCNs 1C351, 1C352, 1C353, and 1C354 and related technology controlled for CB reasons under ECCNs 1E001 and 1E351. Specifically, this rule amends the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) by inserting an ''X'' for Canada under CB Column 1. Prior to the publication of this rule, these items required a license to all destinations, except Canada. As a result of this action, these pathogens, toxins, and microorganisms require a license for export to all destinations, including Canada. This change harmonizes export controls on biological agents and related technology by requiring a license to export such items, worldwide.

F. Clarification of Controls on Mixtures That Contain Trace Amounts of Controlled Chemicals

This rule clarifies the control status of certain mixtures that contain only trace amounts of controlled chemicals. First, License Requirements Note 2 in ECCN 1C350 is revised to clarify that this entry does not control mixtures containing less than 0.5% aggregate quantities, by weight, of the CWC Schedule 1 chemicals controlled by 1C350.a as unavoidable by-products or impurities. Such mixtures are classified as EAR99, instead. However, all other mixtures containing these Schedule 1 chemicals are controlled by ECCN 1C350.a. Second, a new License Requirements Note is added in ECCN 1C995 to clarify that this ECCN does not control mixtures containing less than 0.5% of any single AG-controlled chemical listed in ECCN 1C350 (except those also identified as CWC Schedule 1 chemicals) or any single CW-controlled chemical listed in ECCN 1C355 as unavoidable by-products or impurities. Such mixtures are classified as EAR99, instead.

G. Addition of New States Parties to the Chemical Weapons Convention (CWC) and Clarification of EAR Licensing Policy for Reexports of CWC Schedule 3 Chemicals

This rule makes two changes related to the CWC requirements in the EAR. First, the rule revises Supplement No. 2 to Part 745 (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding the names of countries that have recently become States Parties to the CWC (i.e., Nauru and Uganda). Second, the rule clarifies (in Section 742.18 of the EAR and in the License Requirements sections of ECCNs 1C350, 1C355, and 1C395) that a license is required, for CW reasons, to reexport CWC Schedule 3 chemicals and mixtures identified in these ECCNs from a State not Party to the CWC (a destination not listed in Supplement No. 2 to part 745 of the EAR) to any other State not Party to the CWC and that applications for such reexports generally will be denied.

The Department of Commerce is taking these measures having consulted with the Department of State. The harmonization and expansion of AT controls on chemicals and chemical mixtures and the revised CB controls are described in a report to the Congress, dated May 30, 2002.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. This rule contains collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44

U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

List of Subjects

15 CFR Parts 736 and 742

Exports, Foreign trade.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, Parts 736, 738, 740, 742, 745, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

2. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

4. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

5. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 9, 2000, 65 FR 68063, 3 CFR, 2000 Comp., p. 408.

6. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287(c); 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466(c); 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

PART 736—[AMENDED]

7. Section 736.2 is amended by revising the phrase ''ECCN 1C350 or ECCN 1C355'' to read ''ECCN 1C350, ECCN 1C355, or ECCN 1C395'' in paragraph (b)(7)(i)(C).

PART 738—[AMENDED]

8. Supplement No. 1 to Part 738 is amended by revising the entries for ''Bulgaria'' and ''Canada'' to read as follows:

Supplement No. 1 to Part 738—Commerce Country Chart

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
*		*		*			*		*			*		*		
Bulgaria	X					X	X	X	X	X		X	X			
*		*		*			*		*			*		*		
Canada	X										X					
*		*		*			*		*			*		*		

PART 740—[AMENDED]

9. In Supplement No. 1 to Part 740, Country Group A is amended by revising the entry for ''Bulgaria'' to read as follows:

Supplement No. 1 to Part 740

Country Group A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
* * * * *	*	*		
Bulgaria			X	X
* * * * *	*	*		

PART 742—[AMENDED]

10. Section 742.2 is amended by revising paragraphs (a)(1) introductory text, (a)(2)(i)(A), and (a)(2)(i)(C), and by adding a new paragraph (a)(4) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) * * *

(1) If CB Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations, including Canada, for the following:

* * * * *

(2) * * *

(i) * * *

(A) This licensing requirement includes chemical mixtures identified in ECCN 1C350.a, .b, .c, or .d, except as specified in License Requirements Note 2 to that ECCN.

* * * * *

(C) This licensing requirement does not apply to any of the following medical, analytical, diagnostic, and food testing kits that consist of pre-packaged materials of defined composition that are specifically developed, packaged, and marketed for diagnostic, analytical, or public health purposes:

(*1*) Test kits containing no more than 300 grams of any chemical controlled by ECCN 1C350.b or .c (CB-controlled chemicals also identified as Schedule 2 or 3 chemicals under the CWC) that are destined for export or reexport to CWC States Parties (destinations listed in Supplement No. 2 to Part 745 of the EAR). Such test kits are controlled by ECCN 1C395 for CB and CW reasons, to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR), and for AT reasons.

(*2*) Test kits that contain no more than 300 grams of any chemical controlled by ECCN 1C350.d (CB-controlled chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC). Such test kits are controlled by ECCN 1C995 for AT reasons.

* * * * *

(4) A license is required, to States not Party to the CWC (destinations not listed in Supplement No. 2 to Part 745 of the EAR), for mixtures controlled by 1C395.a and test kits controlled by 1C395.b.

* * * * *

11. Section 742.18 is revised to read as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention).

States that are parties to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), undertake never to develop, produce, acquire, stockpile, transfer, or use chemical weapons. As a State Party to the Convention, the United States is subjecting certain toxic chemicals and their precursors listed in Schedules within the Convention to trade restrictions. Trade restrictions include: a prohibition on the export of Schedule 1 chemicals to States not Party to the CWC; a prohibition on the reexport of Schedule 1 chemicals to all destinations (both States Parties to the CWC and States not Party to the CWC); license requirements for the export of Schedule 1 chemicals to all States Parties; a prohibition on the export of Schedule 2 chemicals to States not Party to the CWC; and an End-Use Certificate requirement for exports of Schedule 3 chemicals to States not Party to the CWC. Exports of CWC chemicals that do not require a license for CW reasons (*e.g.,* exports and reexports of Schedule 2 and Schedule 3 chemicals to States Parties to the CWC) may require a license for other reasons set forth in the EAR. (*See,* in particular, the license requirements in § 742.2 of the EAR that apply to exports and reexports of precursor chemicals controlled by ECCN 1C350, for CB reasons. Also note the end-use and end-user restrictions in part 744 of the EAR and the restrictions that apply to embargoed countries in part 746 of the EAR.)

(a) *License requirements.* (1) *Schedule 1 chemicals and mixtures controlled under ECCN 1C350 or ECCN 1C351.* A license is required for CW reasons to export or reexport Schedule 1 chemicals and mixtures controlled under ECCN 1C350.a or Schedule 1 chemicals controlled under ECCN 1C351.d.5 or d.6 to all destinations *including Canada.* CW applies to 1C351.d.5 for ricin in the form of Ricinus Communis $Agglutinin_{II}$ (RCA_{II}), which is also known as ricin D or Ricinus Communis $Lectin_{III}$ (RCL_{III}), and Ricinus Communis $Lectin_{IV}$ (RCL_{IV}), which is also known as ricin E. CW applies to 1C351.d.6 for saxitoxin identified by C.A.S. #35523–89–8. (Note that the advance notification procedures and annual reporting requirements described in § 745.1 of the EAR also apply to exports of Schedule 1 chemicals.)

(2) *Schedule 2 and 3 chemicals and mixtures controlled under ECCN 1C350, ECCN 1C355, or ECCN 1C395.* (i) *States Parties to the CWC.* Neither a license nor an End-Use Certificate is required for CW reasons to export or reexport Schedule 2 or 3 chemicals and mixtures controlled under ECCN 1C350, ECCN 1C355, or ECCN 1C395 to States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR).

(ii) *States not Party to the CWC.* (A) *Schedule 2 chemicals.* A license is required for CW reasons to export or reexport Schedule 2 chemicals and mixtures controlled under ECCN 1C350.b, ECCN 1C355.a, or ECCN 1C395 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR).

(B) *Schedule 3 chemicals.* (*1*) *Exports.* A license is required for CW reasons to

export Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to Part 745 of the EAR), *unless* the exporter obtains from the consignee an End-Use Certificate (issued by the government of the importing country) prior to exporting the Schedule 3 chemicals and submits it to BIS in accordance with the procedures described in § 745.2 of the EAR. Note, however, that obtaining an End-Use Certificate does not relieve the exporter from the responsibility of complying with other license requirements set forth elsewhere in the EAR.

(*2*) *Reexports.* (*i*) *Reexports from States Parties to the CWC.* Neither a license nor an End-Use Certificate is required for CW reasons to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR) to States not Party to the CWC. However, a license may be required for other reasons set forth elsewhere in the EAR. In addition, reexports of Schedule 3 chemicals may be subject to an End-Use Certificate requirement by governments of other countries when the chemicals are destined for States not Party to the CWC.

(*ii*) *Reexports from States not Party to the CWC.* A license is required for CW reasons to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from a State not Party to the CWC (a destination *not* listed in Supplement No. 2 to part 745 of the EAR) to any other State not Party to the CWC.

(C) *Technology controlled under ECCN 1E355.* A license is required for CW reasons to export or reexport technology controlled under ECCN 1E355 to all States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR), except for Israel and Taiwan.

(b) *Licensing policy.* (1) *Schedule 1 chemicals and mixtures.* (i) *Exports to States Parties to the CWC.* Applications to export Schedule 1 chemicals and mixtures controlled under ECCN 1C350.a or Schedule 1 chemicals controlled under ECCN 1C351.d.5 or d.6 to States Parties to the CWC (destinations listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, *unless* all of the following conditions are met:

(A) The chemicals are destined only for purposes not prohibited under the CWC (*i.e.,* research, medical, pharmaceutical, or protective purposes);

(B) The types and quantities of chemicals are strictly limited to those that can be justified for those purposes;

(C) The Schedule 1 chemicals were not previously imported into the United States (this does not apply to Schedule 1 chemicals imported into the United States prior to April 29, 1997, or imported into the United States directly from the same State Party to which they now are to be returned, *i.e.,* exported); *and*

(D) The aggregate amount of Schedule 1 chemicals in the country of destination at any given time is equal to or less than one metric ton *and* receipt of the proposed export will *not* cause the country of destination to acquire or to have acquired one metric ton or more of Schedule 1 chemicals in any calendar year.

(ii) *Exports to States not Party to the CWC.* Applications to export Schedule 1 chemicals and mixtures controlled under ECCN 1C350.a or Schedule 1 chemicals controlled under ECCN 1C351.d.5 or d.6 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, consistent with U.S. obligations under the CWC to prohibit exports of these chemicals to States not Party to the CWC.

(iii) *Reexports.* Applications to reexport Schedule 1 chemicals and mixtures controlled under ECCN 1C350.a or Schedule 1 chemicals controlled under ECCN 1C351.d.5 or d.6 generally will be denied to all destinations (including both States Parties to the CWC and States not Party to the CWC).

(2) *Schedule 2 chemicals and mixtures.* Applications to export or reexport Schedule 2 chemicals and mixtures controlled under ECCN 1C350.b, ECCN 1C355.a, or ECCN 1C395 to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied, consistent with U.S. obligations under the CWC to prohibit exports of these chemicals to States not Party to the CWC.

(3) *Schedule 3 chemicals and mixtures.* (i) *Exports.* Applications to export Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) generally will be denied.

(ii) *Reexports from States not Party to the CWC.* Applications to reexport Schedule 3 chemicals and mixtures controlled under ECCN 1C350.c, ECCN 1C355.b, or ECCN 1C395.b from a State not Party to the CWC (a destination *not* listed in Supplement No. 2 to part 745 of the EAR) to any other State not Party to the CWC generally will be denied.

(4) *Technology controlled under ECCN 1E355.* Exports and reexports of technology controlled under ECCN 1E355 will be reviewed on a case-by-case basis.

(c) *Contract sanctity.* Contract sanctity provisions are not available for license applications reviewed under this section.

PART 745—[AMENDED]

12. Supplement No. 2 to Part 745 is amended by revising the undesignated center heading ''List of States Parties as of August 1, 2001'' to read ''List of States Parties as of May 1, 2002'' and by adding, in alphabetical order, the countries Nauru and Uganda.

PART 774—[AMENDED]

13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' & ''Toxins,'' is amended by revising ECCN 1C350 to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

Reason for Control: CB, CW, AT

Control(s)	*Country Chart*
CB applies to entire entry.	CB Column 2

CW applies to 1C350.a, .b, and .c. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required, for CW reasons, to export or reexport Schedule 1 chemicals and mixtures identified in 1C350.a to all destinations, including Canada. A license is required, for CW reasons, to export or reexport Schedule 2 chemicals and mixtures identified in 1C350.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR). A license is required, for CW reasons, to export Schedule 3 chemicals and mixtures identified in 1C350.c to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country has been obtained by the exporter prior to export. A license is required, for CW reasons, to reexport Schedule 3 chemicals and mixtures identified in 1C350.c from a State not Party to the CWC to any other State not Party to the CWC. (*See* § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons. *See* § 745.2 of the EAR for End-Use Certificate requirements that apply to exports of Schedule 3 chemicals to countries not

listed in Supplement No. 2 to part 745 of the EAR.) AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. (*See* Part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See Part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba, Iran, Iraq, and Libya.)

License Requirement Notes:

1. *SAMPLE SHIPMENTS:* Subject to the following requirements and restrictions, a license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of a single chemical to any one consignee during a calendar year. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons.

a. *Chemicals Not Eligible:*

A. *CWC Schedule 1 chemicals (all destinations).* The CWC Schedule 1 chemicals and mixtures identified in 1C350.a are *not* eligible for sample shipment to any destination without a license.

B. *CWC Schedule 2 chemicals (States not Party to the CWC).* No CWC Schedule 2 chemical or mixture identified in 1C350.b is eligible for sample shipment to *States not Party to the CWC* (destinations *not* listed in Supplement No. 2 to part 745 of the EAR) without a license.

b. *Countries Not Eligible:* The following countries are *not* eligible to receive sample shipments of any chemicals controlled by this ECCN without a license: Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria.

c. *Sample shipments that require an End-Use Certificate for CW reasons:* No CWC Schedule 3 chemical or mixture identified in 1C350.c is eligible for sample shipment to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to Part 745 of the EAR) without a license, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export (*see* § 745.2 of the EAR for End-Use Certificate requirements).

d. *Sample shipments that require a license for reasons set forth elsewhere in the EAR:* Sample shipments, as described in this Note 1, may require a license for reasons set forth elsewhere in the EAR. See, in particular, the end-use/end-user restrictions in Part 744 of the EAR, and the restrictions that apply to embargoed countries in Part 746 of the EAR.

e. *Quarterly report requirement.* The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC 20044, Attn: ''Report of Sample Shipments of Chemical Precursors''.

2. *MIXTURES:*

a. Mixtures that contain precursor chemicals identified in ECCN 1C350, in concentrations that are below the levels indicated in 1C350.a through .d, are controlled by ECCN 1C395 or 1C995 and are subject to the license requirements specified in those ECCNs.

b. A license is not required for mixtures controlled under this ECCN when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

c. A license is not required for mixtures containing less than 0.5% aggregate quantities, by weight, of the CWC Schedule 1 chemicals controlled by 1C350.a as unavoidable by-products or impurities. Such mixtures are classified as EAR99. All other mixtures containing these Schedule 1 chemicals are controlled by ECCN 1C350.a.

Note to Mixtures: Calculation of concentrations of controlled chemicals:

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Percent Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

3. *COMPOUNDS:* Compounds created with any chemicals identified in this ECCN 1C350 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

4. *TESTING KITS:* Certain medical, analytical, diagnostic, and food testing kits containing small quantities of chemicals identified in this ECCN 1C350, except chemicals identified as Schedule 1 chemicals under the CWC, are excluded from the scope of this ECCN and are controlled under ECCN 1C395 or ECCN 1C995. (Note that replacement reagents for such kits are controlled by this ECCN 1C350 if the reagents contain at least one of the precursor chemicals identified in 1C350 in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.)

Technical Notes: 1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (*see* 1C350.d.7 in the List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Liters or kilograms, as appropriate.

Related Controls: 1C350.a controls certain CWC Schedule 1 chemicals (*see* § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. *See* §§ 742.18 and 745.1 of the EAR for notification and annual report requirements. *See* 22 CFR part 121, Category XIV and § 121.7 for additional CWC Schedule 1 chemicals controlled by the Department of State. Also see ECCNs 1C355, 1C395, and 1C995.

Related Definitions: See § 770.2(k) of the EAR for synonyms for the chemicals listed in this entry.

Items:

a. Australia Group-controlled precursor chemicals also identified as Schedule 1 chemicals under the CWC, as follows, and mixtures containing any amount of the following chemicals, except mixtures that contain less than 0.5% aggregate quantities (by weight) of these chemicals as unavoidable by-products or impurities (*i.e.*, the Schedule 1 chemicals are not intentionally produced or added):

a.1. (C.A.S. #57856–11–8) 0-Ethyl-2-diisopropylaminoethyl methyl phosphonite (QL);

a.2. (C.A.S. #753–98–0) Ethyl phosphonyl difluoride;

a.3. (C.A.S. #676–99–3) Methyl phosphonyl difluoride.

b. Australia Group-controlled precursor chemicals also identified as Schedule 2 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

b.1. (C.A.S. #7784–34–1) Arsenic trichloride;

b.2. (C.A.S. #76–93–7) Benzilic acid;

b.3. (C.A.S. #78–38–6) Diethyl ethylphosphonate;

b.4. (C.A.S. #15715–41–0) Diethyl methylphosphonite;

b.5. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;

b.6. (C.A.S. #5842–07–9) N,N-Diisopropyl-beta-aminoethane thiol;

b.7. (C.A.S. #4261–68–1) N,N-Diisopropyl-beta-aminoethyl chloride hydrochloride;

b.8. (C.A.S. #96–80–0) N,N-Diisopropyl-beta-aminoethanol;

b.9. (C.A.S. #96–79–7), N,N-Diisopropyl-beta-aminoethyl chloride;

b.10. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;

b.11. (C.A.S. #756–79–6) Dimethyl methylphosphonate;

b.12. (C.A.S. #1498–40–4) Ethyl phosphonous dichloride [Ethyl phosphinyl dichloride];

b.13. (C.A.S. #430–78–4) Ethyl phosphonus difluoride [Ethyl phosphinyl difluoride];

b.14. (C.A.S. #1066–50–8) Ethyl phosphonyl dichloride;

b.15. (C.A.S. #676–83–5) Methyl phosphonous dichloride [Methyl phosphinyl dichloride];

b.16. (C.A.S. #753–59–3) Methyl phosphonous difluoride [Methyl phosphinyl difluoride];

b.17. (C.A.S. #676–97–1) Methyl phosphonyl dichloride;

b.18. (C.A.S. #464–07–3) Pinacolyl alcohol;
b.19. (C.A.S. #1619–34–7) 3-Quinuclidinol;
b.20. (C.A.S. #111–48–8) Thiodiglycol.

c. Australia Group-controlled precursor chemicals also identified as Schedule 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:
c.1. (C.A.S. #762–04–9) Diethyl phosphite;
c.2. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
c.3. (C.A.S. #10025–87–3) Phosphorus oxychloride;
c.4. (C.A.S. #10026–13–8) Phosphorus pentachloride;
c.5. (C.A.S. #7719–12–2) Phosphorus trichloride;
c.6. (C.A.S. #10025–67–9) Sulfur monochloride;
c.7. (C.A.S. #10545–99–0) Sulfur dichloride;
c.8. (C.A.S. #7719–09–7) Thionyl chloride;
c.9. (C.A.S. #102–71–6) Triethanolamine;
c.10. (C.A.S. #122–52–1) Triethyl phosphite;
c.11. (C.A.S. #121–45–9) Trimethyl phosphite.

d. Other Australia Group-controlled precursor chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:
d.1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;
d.2. (C.A.S. #107–07–3) 2-Chloroethanol;
d.3. (C.A.S. #100–37–8) N,N-Diethylaminoethanol;
d.4. (C.A.S. #108–18–9) Di-isopropylamine;
d.5. (C.A.S. #124–40–3) Dimethylamine;
d.6. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
d.7. (C.A.S. #7664–39–3) Hydrogen fluoride;
d.8. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
d.9. (C.A.S. #76–89–1) Methyl benzilate;
d.10. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
d.11. (C.A.S. #75–97–8) Pinacolone;
d.12. (C.A.S. #151–50–8) Potassium cyanide;
d.13. (C.A.S. #7789–23–3) Potassium fluoride;
d.14. (C.A.S. #7789–29–9) Potassium bifluoride;
d.15. (C.A.S. #3731–38–2) 3-Quinuclidone;
d.16. (C.A.S. #1333–83–1) Sodium bifluoride;
d.17. (C.A.S. #143–33–9) Sodium cyanide;
d.18. (C.A.S. #7681–49–4) Sodium fluoride;
d.19. (C.A.S. #1313–82–2) Sodium sulfide;
d.20. (C.A.S. #637–39–8) Triethanolamine hydrochloride.

14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' & ''Toxins,'' is amended by revising ECCN 1C353 to read as follows:

1C353 Genetic elements and genetically modified ''microorganisms'', as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)	*Country Chart*
CB applies to entire entry.	CB Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value
Related Controls: Vaccines that contain genetic elements or genetically modified organisms identified in this entry are controlled by ECCN 1C991.
Related Definitions: N/A
Items:
a. Genetic elements, as follows:
a.1. Genetic elements that contain nucleic acid sequences associated with pathogenicity of organisms controlled by 1C351.a. to .c, 1C352, or 1C354;
a.2. Genetic elements that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.

Technical Note: Genetic elements include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified.

b. Genetically modified organisms, as follows:
b.1. Genetically modified organisms that contain nucleic acid sequences associated with pathogenicity of organisms controlled by 1C351.a. to .c, 1C352, or 1C354;
b.2. Genetically modified organisms that contain nucleic acid sequences coding for any of the ''toxins'' controlled by 1C351.d or ''sub-units of toxins'' thereof.

15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' & ''Toxins,'' is amended by revising ECCN 1C355 to read as follows:

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR.

License Requirements

Reason for Control: CW, AT
Control(s)
CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC to any other State not Party to the CWC. (*See* § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)
AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. (*See* Part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. *See* Part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba, Iran, Iraq, and Libya.)
License Requirements Notes:
1. *MIXTURES:*
a. Mixtures containing toxic and precursor chemicals identified in ECCN 1C355, in concentrations that are below the control levels indicated in 1C355.a and .b, are controlled by ECCN 1C995 and are subject to the license requirements specified in that ECCN.
b. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use or packaged for individual use. Such consumer goods are classified as EAR99.

Note to Mixtures: Calculation of concentrations of CW-controlled chemicals:
a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;
b. Percent Weight Calculation. When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

2. *COMPOUNDS:* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

Technical Notes: For purposes of this entry, a ''mixture'' is defined as a solid, liquid, or gaseous product made up of two or more components that do not react together under normal storage conditions.

License Exceptions

LVS: N/A.
GBS: N/A.
CIV: N/A.

List of Items Controlled

Unit: Liters or kilograms, as appropriate.
Related Controls: See also ECCNs 1C350, 1C351, 1C395, and 1C995. See §§ 742.18 and 745.2 of the EAR for End-Use Certification requirements. See 22 CFR part 121, Category

XIV and § 121.7 for chloropicrin (trichloronitromethane) (C.A.S. 76–06–2) (Schedule 3). Mixtures containing chloropicrin (trichloronitromethane) that have been transferred to the Department of Commerce from the Department of State through a commodity jurisdiction determination are controlled under this entry.

Related Definitions: N/A.

Items:

a. CWC Schedule 2 chemicals and mixtures containing Schedule 2 chemicals:

a.1. Toxic chemicals, as follows, and mixtures containing toxic chemicals:

a.1.a. PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene (C.A.S. 382–21–8) and mixtures in which PFIB constitutes more than 1 percent of the weight of the mixture;

a.1.b. [Reserved].

a.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes more than 10 percent of the weight of the mixture:

a.2.a. FAMILY: Chemicals except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl, or propyl (normal or iso) group with no additional carbon atoms in the structure;

Note: 1C355.a.2.a does not control Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (C.A.S. 944–22–9).

a.2.b. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides;

a.2.c. FAMILY: Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr, or i-Pr)-phosphoramidates;

a.2.d. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts;

a.2.e. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts;

Note: 1C355.a.2.e. does not control N,N-Dimethylaminoethanol and corresponding protonated salts (C.A.S. 108-01-0) or N,N-Diethylaminoethanol and corresponding protonated salts (C.A.S. 100–37–8).

a.2.f. FAMILY: N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts.

b. CWC Schedule 3 chemicals and mixtures containing Schedule 3 chemicals:

b.1. Toxic chemicals, as follows, and mixtures in which at least one of the following toxic chemicals constitutes 30 percent or more of the weight of the mixture:

b.1.a. Phosgene: Carbonyl dichloride (C.A.S. 75–44–5);

b.1.b. Cyanogen chloride (C.A.S. 506–77–4);

b.1.c. Hydrogen cyanide (C.A.S. 74–90–8).

b.2. Precursor chemicals, as follows, and mixtures in which at least one of the following precursor chemicals constitutes 30 percent or more of the weight of the mixture:

b.2.a. Ethyldiethanolamine (C.A.S. 139–87–7);

b.2.b. Methyldiethanolamine (C.A.S. 105–59–9).

b.3. Mixtures containing chloropicrin (trichloronitromethane)(C.A.S. 76–06–2), transferred from the Department of State (see Related Controls).

16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' & ''Toxins,'' is amended by adding a new ECCN 1C395 immediately following ECCN 1C355 to read as follows:

1C395 Mixtures and Medical, Analytical, Diagnostic, and Food Testing Kits Not Controlled by ECCN 1C350, as follows (See List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT

Control(s)	*Country Chart*

CB applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CB reasons in 1C395. A license is required, for CB reasons, to export or reexport mixtures controlled by 1C395.a and test kits controlled by 1C395.b to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to part 745 of the EAR).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required for CW reasons, as follows, to States not Party to the CWC (destinations *not* listed in Supplement No. 2 to Part 745 of the EAR): (1) Exports and reexports of mixtures controlled by 1C395.a, (2) exports and reexports of test kits controlled by 1C395.b that contain CWC Schedule 2 chemicals controlled by ECCN 1C350, (3) exports of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals controlled by ECCN 1C350, except that a license is not required, for CW reasons, to export test kits containing CWC Schedule 3 chemicals if an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export, and (4) reexports from States not Party to the CWC of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals. (*See* § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. (*See* Part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. *See* Part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba, Iran, Iraq, and Libya.)

License Requirement Notes:

1. 1C395.b does not control mixtures that contain precursor chemicals identified in ECCN 1C350.b or .c in concentrations below the control levels for mixtures indicated in 1C350.b or .c. 1C395.a and 1C995.a.1 and a.2.a control such mixtures, unless they are consumer goods as described in License Requirements Note 2 of this ECCN.

2. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: 1. ECCN 1C350 controls mixtures containing 30 percent or higher concentrations, by weight, of any single CWC Schedule 2 chemical identified in ECCN 1C350.b; ECCN 1C995 controls such mixtures containing concentrations of 10 percent or less. 2. ECCN 1C995 controls ''medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions paragraph of this ECCN) that contain precursor chemicals listed in 1C350.d. ECCN 1C350 controls any such kits that contain CWC Schedule 1 chemicals listed in 1C350.a or testing kits in which the amount of any single chemical listed in 1C350.b, .c, or .d exceeds 300 grams by weight.

Related Definitions: For the purpose of this entry, ''medical, analytical, diagnostic, and food testing kits'' are pre-packaged materials of defined composition that are specifically developed, packaged and marketed for medical, analytical, diagnostic, or public health purposes. Replacement reagents for medical, analytical, diagnostic, and food testing kits described in 1C395.b are controlled by ECCN 1C350 if the reagents contain at least one of the precursor chemicals identified in that ECCN in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.b. or .c.

Items:

a. Mixtures containing more than 10 percent, but less than 30 percent, by weight of any single CWC Schedule 2 chemical identified in ECCN 1C350.b (For controls on other mixtures containing these chemicals, see Note 1 in the Related Controls paragraph of this ECCN.).

b. ''Medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions for this ECCN) that contain CWC Schedule 2 or 3 chemicals controlled by ECCN 1C350.b or .c in an amount *not* exceeding 300 grams per chemical. (For controls on other such test kits containing these and other controlled chemicals, see Note 2 in the Related Controls paragraph of this ECCN.)

17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms,'' & ''Toxins,'' is amended by revising ECCN 1C995 to read as follows:

1C995 Mixtures not controlled by ECCN 1C350, ECCN 1C355 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350 or ECCN 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350 or ECCN 1C395 that contain chemicals controlled by ECCN

1C350.d, as follows (see List of Items controlled).

License Requirements

Reason for Control: AT

Control(s)	*Country Chart*

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C995. A license is required, for AT reasons, to export or reexport items controlled by 1C995 to Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. (*See* Part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. *See* Part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba, Iran, Iraq, and Libya.)

License Requirement Notes:

1. This ECCN does not control mixtures containing less than 0.5% of any single toxic or precursor chemical controlled by ECCN 1C350.b, .c, or .d or ECCN 1C355 as unavoidable by-products or impurities. Such mixtures are classified as EAR99.

2 1C995.c does not control mixtures that contain precursor chemicals identified in 1C350.d in concentrations below the control levels for mixtures indicated in 1C350.d. 1C995.a.2.b controls such mixtures, unless they are consumer goods as described in License Requirements Note 3 of this ECCN.

3. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value

Related Controls: 1. ECCN 1C350 controls mixtures containing 30 percent or higher concentrations of any single CWC Schedule 2 chemical identified in ECCN 1C350.b. ECCN 1C395 controls mixtures containing concentrations of more than 10 percent, but less than 30 percent, of any single CWC Schedule 2 chemical identified in ECCN 1C350.b. 2. ECCN 1C350 controls mixtures containing chemicals identified in ECCN 1C350.c or .d that exceed the concentration levels indicated in 1C995.a.2. 3. ECCN 1C355 controls mixtures containing chemicals identified in ECCN 1C355 that exceed the concentration levels indicated in 1C995.b. 4. ECCN 1C395 controls ''medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions paragraph of this ECCN) that contain CWC Schedule 2 or 3 chemicals listed in 1C350.b or .c. ECCN 1C350 controls any such kits that contain CWC Schedule 1 chemicals listed in 1C350.a or testing kits in which the amount of any single chemical listed in 1C350.b, .c, or .d exceeds 300 grams by weight.

Related Definitions: For the purpose of this entry, ''medical, analytical, diagnostic, and food testing kits'' are pre-packaged materials of defined composition that are specifically developed, packaged and marketed for medical, analytical, diagnostic, or public health purposes. Replacement reagents for medical, analytical, diagnostic, and food testing kits described in 1C995.c are controlled by ECCN 1C350 if the reagents contain at least one of the precursor chemicals identified in that ECCN in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.d.

Items:

a. Mixtures containing the following concentrations of precursor chemicals controlled by ECCN 1C350 (For controls on other mixtures containing these chemicals, see Notes 1 and 2 in the Related Controls paragraph of this ECCN.):

a.1. Mixtures containing 10 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by ECCN 1C350.b;

a.2. Mixtures containing less than 30 percent, by weight, of:

a.2.a. Any single CWC Schedule 3 chemical controlled by ECCN 1C350.c; or

a.2.b. Any single precursor chemical controlled by ECCN 1C350.d.

b. Mixtures containing the following concentrations of toxic or precursor chemicals controlled by ECCN 1C355 (For controls on other mixtures containing these chemicals, see Note 3 in the Related Controls paragraph of this ECCN.):

b.1. Mixtures containing the following concentrations of CWC Schedule 2 chemicals controlled by ECCN 1C355.a:

b.1.a. Mixtures containing 1 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by ECCN 1C355.a.1 (i.e., mixtures containing PFIB); or

b.1.b. Mixtures containing 10 percent or less, by weight, of any single CWC Schedule 2 chemical controlled by 1C355.a.2;

b.2. Mixtures containing less than 30 percent, by weight, of any single CWC Schedule 3 chemical controlled by ECCN 1C355.b.

c. ''Medical, analytical, diagnostic, and food testing kits'' (as defined in the Related Definitions for this ECCN) that contain precursor chemicals controlled by ECCN 1C350.d in an amount *not* exceeding 300 grams per chemical. (For controls on other such test kits containing these and other controlled chemicals, see Note 4 in the Related Controls paragraph of this ECCN.)

18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by revising the List of Items Controlled section in ECCN 2B350 to read as follows:

2B350 Chemical manufacturing facilities and equipment, as follows (see List of Items Controlled).

List of Items Controlled

Unit: Equipment in number

Related Controls: The controls in this entry do not apply to equipment that is: a.) specially designed for use in civil applications (*e.g.,* food processing, pulp and paper processing, or water purification); AND b.) inappropriate, by the nature of its design, for use in storing, processing, producing or conducting and controlling the flow of chemical weapons precursors controlled by 1C350.

Related Definitions: For purposes of this entry the term ''chemical warfare agents'' are those agents subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121)

Items:

a. Reaction vessels or reactors, with or without agitators, with total internal (geometric) volume greater than 0.1 m^3 (100 liters) and less than 20 m^3 (20,000 liters), where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

a.1. Alloys with more than 25% nickel and 20% chromium by weight;

a.2. Fluoropolymers;

a.3. Glass (including vitrified or enamelled coating or glass lining);

a.4. Nickel or alloys with more than 40% nickel by weight;

a.5. Tantalum or tantalum alloys;

a.6. Titanium or titanium alloys; *or*

a.7. Zirconium or zirconium alloys.

b. Agitators for use in reaction vessels or reactors, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

b.1. Alloys with more than 25% nickel and 20% chromium by weight;

b.2. Fluoropolymers;

b.3. Glass (including vitrified or enamelled coatings or glass lining);

b.4. Nickel or alloys with more than 40% nickel by weight;

b.5. Tantalum or tantalum alloys;

b.6. Titanium or titanium alloys; *or*

b.7. Zirconium or zirconium alloys.

c. Storage tanks, containers or receivers with a total internal (geometric) volume greater than 0.1 m^3 (100 liters) where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

c.1. Alloys with more than 25% nickel and 20% chromium by weight;

c.2. Fluoropolymers;

c.3. Glass (including vitrified or enamelled coatings or glass lining);

c.4. Nickel or alloys with more than 40% nickel by weight;

c.5. Tantalum or tantalum alloys;

c.6. Titanium or titanium alloys; *or*

c.7. Zirconium or zirconium alloys.

d. Heat exchangers or condensers with a heat transfer surface area of less than 20 m^2, but greater than 0.15 m^2, and tubes, plates, coils or blocks (cores) designed for such heat exchangers or condensers, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:

d.1. Alloys with more than 25% nickel and 20% chromium by weight;

d.2. Fluoropolymers;

d.3. Glass (including vitrified or enamelled coatings or glass lining);

d.4. Graphite or carbon-graphite;

d.5. Nickel or alloys with more than 40% nickel by weight;

d.6. Silicon carbide;
d.7. Tantalum or tantalum alloys;
d.8. Titanium or titanium alloys;
d.9. Titanium carbide; *or*
d.10. Zirconium or zirconium alloys.
e. Distillation or absorption columns of internal diameter greater than 0.1 m, and liquid distributors, vapor distributors or liquid collectors designed for such distillation or absorption columns, where all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
e.1. Alloys with more than 25% nickel and 20% chromium by weight;
e.2. Fluoropolymers;
e.3. Glass (including vitrified or enamelled coatings or glass lining);
e.4. Graphite or carbon-graphite;
e.5. Nickel or alloys with more than 40% nickel by weight;
e.6. Tantalum or tantalum alloys;
e.7. Titanium or titanium alloys; *or*
e.8. Zirconium or zirconium alloys.
f. Remotely operated filling equipment in which all surfaces that come in direct contact with the chemical(s) being processed are made from any of the following materials:
f.1. Alloys with more than 25% nickel and 20% chromium by weight; *or*
f.2. Nickel or alloys with more than 40% nickel by weight.
g. Valves with nominal sizes greater than 1.0 cm (3/8 in.), in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
g.1. Nickel or alloys with more than 40% nickel by weight;
g.2. Alloys with more than 25% nickel and 20% chromium by weight;
g.3. Fluoropolymers;
g.4. Glass or glass lined (including vitrified or enameled coatings);
g.5. Tantalum or tantalum alloys;
g.6. Titanium or titanium alloys; *or*
g.7. Zirconium or zirconium alloys.
h. Multi-walled piping incorporating a leak detection port, in which all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:
h.1. Alloys with more than 25% nickel and 20% chromium by weight;
h.2. Fluoropolymers;
h.3. Glass (including vitrified or enamelled coatings or glass lining);
h.4. Graphite or carbon-graphite;
h.5. Nickel or alloys with more than 40% nickel by weight;
h.6. Tantalum or tantalum alloys;
h.7. Titanium or titanium alloys; *or*
h.8. Zirconium or zirconium alloys.
i. Multiple-seal, canned drive, magnetic drive, bellows or diaphragm pumps, with manufacturer's specified maximum flow-rate greater than 0.6 m^3/hour, or vacuum pumps with manufacturer's specified maximum flow-rate greater than 5 m^3/hour (under standard temperature (273 K (0° C)) and pressure (101.3 kPa) conditions), and casing (pump bodies), preformed casing liners, impellers, rotors or jet pump nozzles designed for such pumps, in which all surfaces that come into direct contact with the chemical(s) being processed are made from any of the of the following materials:
i.1. Alloys with more than 25% nickel and 20% chromium by weight;
i.2. Ceramics;
i.3. Ferrosilicon;
i.4. Fluoropolymers;
i.5. Glass (including vitrified or enamelled coatings or glass lining);
i.6. Graphite or carbon-graphite;
i.7. Nickel or alloys with more than 40% nickel by weight;
i.8. Tantalum or tantalum alloys;
i.9. Titanium or titanium alloys, *or*
i.10. Zirconium or zirconium alloys.
j. Incinerators designed to destroy chemical warfare agents, chemical weapons precursors controlled by 1C350, or chemical munitions having specially designed waste supply systems, special handling facilities and an average combustion chamber temperature greater than 1000°C in which all surfaces in the waste supply system that come into direct contact with the waste products are made from or lined with any of the following materials:
j.1. Alloys with more than 25% nickel and 20% chromium by weight;
j.2. Ceramics; *or*
j.3. Nickel or alloys with more than 40% nickel by weight.

Technical Note: Carbon-graphite is a composition consisting primarily of graphite and amorphous carbon, in which the graphite is 8 percent or more by weight of the composition.

19. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, is amended by revising the List of Items Controlled section in ECCN 2B352 to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: For purposes of this entry, isolators include flexible isolators, dry boxes, anaerobic chambers and glove boxes.
Items:
a. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (Geneva, 1983).

b. Fermenters capable of cultivation of pathogenic microorganisms, viruses, or for toxin production, without the propagation of aerosols, having a capacity equal to or greater than 100 liters.

Technical Note: Fermenters include bioreactors, chemostats, and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:
c.1. One or more sealing joints within the steam containment area;
c.2. A flow rate greater than 100 liters per hour;
c.3. Components of polished stainless steel or titanium; *and*
c.4. Capable of *in situ* steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment capable of continuous separation of pathogenic microorganisms, viruses, toxins, and cell cultures without the propagation of aerosols, having all of the following characteristics:
d.1. Equal to or greater than 5 square meters;
d.2. Capable of *in situ* sterilization.
e. Steam sterilizable freeze-drying equipment with a condenser capacity of 10 kgs of ice or greater in 24 hours, but less than 1,000 kgs of ice in 24 hours.
f. Protective and containment equipment, as follows:
f.1. Protective full or half suits, or hoods dependant upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

f.2. Class III biological safety cabinets or isolators with similar performance standards, *e.g.,* flexible isolators, dry boxes, anaerobic chambers, glove boxes or laminar flow hoods (closed with vertical flow).
g. Chambers designed for aerosol challenge testing with microorganisms, viruses, or toxins and having a capacity of 1 m^3 or greater.

Dated: May 23, 2002.

James J. Jochum,

Assistant Secretary for Export Administration.

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BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 601

[Docket No. 98N–0237]

RIN 0910–AC05

New Drug and Biological Drug Products; Evidence Needed to Demonstrate Effectiveness of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its new drug and biological product regulations to allow appropriate studies in animals in certain cases to provide

substantial evidence of the effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances. This rule will apply when adequate and well-controlled clinical studies in humans cannot be ethically conducted and field efficacy studies are not feasible. In these situations, certain new drug and biological products that are intended to reduce or prevent serious or life-threatening conditions may be approved for marketing based on evidence of effectiveness derived from appropriate studies in animals and any additional supporting data.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT:
Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041;
or Karen L. Goldenthal, Center for Biologics Evaluation and Research (HFM–475), 1401 Rockville Pike, suite 370 North, Rockville, MD 20852, 301–827–3070.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of October 5, 1999 (64 FR 53960), we (FDA) proposed to amend our new drug and biological product regulations to identify the information needed to provide substantial evidence of the effectiveness of certain new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances. We are finalizing that proposed rule by adding subpart I to part 314 (21 CFR part 314) and subpart H to part 601 (21 CFR part 601).

This final rule provides for approval of certain new drug and biological products based on animal data when adequate and well-controlled efficacy studies in humans cannot be ethically conducted because the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers and field trials are not feasible prior to approval. Under this rule, in these situations, certain new drug and biological products that are intended to reduce or prevent serious or life-threatening conditions can be approved for marketing based on evidence of effectiveness derived from appropriate studies in animals, without adequate and well-controlled efficacy studies in humans (§ 314.126). In assessing the sufficiency of animal data, the agency may take into account other data, including human data, available to the agency. Under this rule, FDA can rely on the evidence from animal studies to provide substantial evidence of the effectiveness of these products when:

1. There is a reasonably well-understood pathophysiological mechanism for the toxicity of the chemical, biological, radiological, or nuclear substance and its amelioration or prevention by the product;

2. The effect is demonstrated in more than one animal species expected to react with a response predictive for humans, unless the effect is demonstrated in a single animal species that represents a sufficiently well-characterized animal model (meaning the model has been adequately evaluated for its responsiveness) for predicting the response in humans;

3. The animal study endpoint is clearly related to the desired benefit in humans, which is generally the enhancement of survival or prevention of major morbidity; and

4. The data or information on the pharmacokinetics and pharmacodynamics of the product or other relevant data or information in animals and humans is sufficiently well understood to allow selection of an effective dose in humans, and it is therefore reasonable to expect the effectiveness of the product in animals to be a reliable indicator of its effectiveness in humans.

All studies subject to this rule must be conducted in accordance with preexisting requirements under the good laboratory practices (21 CFR part 58) regulations and the Animal Welfare Act (7 U.S.C. 2131 *et. seq.*).

Safety evaluation of products is not addressed in this rule. Products evaluated for effectiveness under subpart I of part 314 and subpart H of part 601 will be evaluated for safety under preexisting requirements for establishing the safety of new drug and biological products. The agency believes that the safety of most of these products can be studied in human volunteers similar to the people who would be exposed to the product. FDA recognizes that some safety data, such as data on possible adverse interactions between the toxic substance itself and the new product, may not be available. This is not expected to keep the agency from making an adequate safety evaluation. FDA's procedures and standards for evaluating the safety of new drug and biological products are sufficiently flexible to provide for the safety evaluation of products evaluated for efficacy under subpart I of part 314 and subpart H of part 601.

This rule will not apply if product approval can be based on standards described elsewhere in our regulations (for example, accelerated approval based on human surrogate markers or clinical endpoints other than survival or irreversible morbidity).[1]

II. Comments on the Proposed Rule and Our Response

We received comments on the proposed rule from two pharmaceutical companies and one physician affiliated with a university. We also received comments from the National Institutes of Health (NIH). The NIH comments were based on a prepublication draft of the proposed rule, but the comments were received too late to be addressed in the proposed rule. The NIH comments have been placed in the docket for this rule and are addressed in this document.

In addition to the changes we have made in response to comments, we have changed the titles of subpart I of part 314 and subpart H (formerly subpart G) of part 601 to better describe the scope of the subparts. Subpart I of part 314 is now entitled ''Approval of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible'' and subpart H of part 601 is now entitled ''Approval of Biological Products When Human Efficacy Studies Are Not Ethical or Feasible.'' Proposed subpart G has been redesignated as subpart H in the final rule because subpart G has since been designated for regulations on postmarketing studies. Proposed §§ 601.60 through 601.65 have been renumbered §§ 601.90 through 601.95 in subpart H.

We have also changed, on our own initiative, the requirements proposed in §§ 314.610(c) and 601.61(c) (§§ 314.610(b)(3) and 601.91(b)(3) in this final rule). We have deleted the requirement that self-administered drug products approved under this rule be in unit-of-use packaging with attached patient labeling. In addition, we have eliminated the distinction between self-

[1] An example of a drug approval based on human surrogate markers is our August 30, 2000, approval of an efficacy supplement for ciprofloxacin. Ciprofloxacin HCl was approved for postexposure management of inhalational anthrax. The approval was based, in part, on human studies demonstrating that ciprofloxacin achieved serum concentrations reaching or exceeding levels associated with improved survival of animals exposed to aerosolized *Bacillus anthracis* spores. The results from these studies were combined with the knowledge of effectiveness in humans of ciprofloxacin for other bacterial infections, including pneumonia. The validity of the human surrogate marker was supported by animal studies.

administered products and products administered by health professionals.

Whether a product is self-administered or administered by a health professional, it is important to inform patient recipients that a product approved under this rule has not been studied for efficacy in humans because of ethical or feasibility reasons.[2] It is also important that patient recipients receive information about indications, dosage and administration, contraindications, reasonably foreseeable risks, adverse reactions, anticipated benefits, and drug interactions. This rule requires that all of this information be provided to patient recipients of products approved under subpart I of part 314 and subpart H of part 601.

We believe, however, that the proposed unit-of-use packaging and attached patient-labeling requirement could have had the unintended effect of hampering the distribution and dispensing of these products in the event of an emergency. The added bulk of unit-of-use packaging could have made stockpiling and transporting more difficult in many cases. The proposed requirement might also have hampered the speedy distribution of products for additional indications previously approved outside of this rule.

Applicants may meet the requirements of new §§ 314.610(b)(3) and 601.91(b)(3) in a variety of ways, as long as sponsors make provisions to get the information to patients. For example, the sponsor could provide reproducible master copies of labeling information or presentations for patient recipients that would be appropriate in the event of an emergency.

We have also changed proposed §§ 314.610(c) and 601.61(c) (§§ 314.610(b) and 601.91(b) in this final rule) to require that the patient labeling explain that, for ethical or feasibility reasons, the product's approval was based on efficacy studies conducted only in animals. This explanation will better inform patient recipients about the nature and ethical basis of the product approval under this rule and how that approval differs from approval of products based on standard human efficacy studies.

Finally, we have added to §§ 314.610(b)(1) and 601.91(b)(1) (proposed §§ 314.610(a) and 601.61(a)) a requirement that applicants include a plan or approach to fulfilling postmarketing study commitments as part of their application. We recognize that such studies normally will not be conducted unless an emergency arises that requires the product's use. Furthermore, when the product is used in an emergency, it may not be feasible for sponsors to conduct postmarketing studies in a timely manner, nor is it our intention to require sponsors to send investigators into areas of exposure. We do, however, believe that applicants can plan a postmarketing study approach, in consultation with the agency, as part of an overall response to an event.

The requirement to submit a plan for postmarketing studies is consistent with the requirements for sponsors under the accelerated approval process provided for in subpart H of part 314.

The procedures in subpart H and in this rule are similar because, to assess efficacy, both allow use of an endpoint that is not a clinical endpoint showing a benefit. Instead the rules under subpart H allow for reliance on a clinical surrogate endpoint and this rule allows for the use of animal data as an endpoint.

Postmarketing studies are critical in both of these situations to verify and describe the clinical benefit of the drug or biological product. The postmarketing studies may provide us with data that directly verify that the product provides the desired benefit in humans, such as increased survival or prevention of major morbidity.

(Comment 1) One comment suggested that we define ''lethal'' and ''permanently disabling.'' The comment expressed concern that without such definitions, subpart I of part 314 and subpart H of part 601 will be misapplied in situations where clinical testing can and should be carried out.

The definitions of ''lethal'' and ''permanently disabling'' would seem to be well understood. Although we share the concern that too expansive an interpretation of ''lethal'' or ''permanently disabling'' could lead to attempts to apply this rule when human studies are, in fact, feasible, we are also concerned that too restrictive a definition of ''lethal'' or ''permanently disabling'' could lead to failure to apply subpart I of part 314 and subpart H of part 601 in situations where they should be applied to protect the public health. We believe that, as a general matter, we must rely on the good sense and responsibility of those health professionals who will be seeking to apply subpart I of part 314 and subpart H of part 601 in the future, and on responsible review of specific cases by FDA. Nevertheless, we can provide guidance for applying subpart I of part 314 and subpart H of part 601 by clarifying that a ''lethal substance'' is one that is likely to kill at least some of the humans who have been exposed to the substance and a ''permanently disabling substance'' is one that is likely to cause a permanent physical or mental impairment that substantially limits one or more of the major life activities in at least some of the humans who have been exposed to the substance.

(Comment 2) One comment stated that the rule does not explicitly cover infectious substances and pointed out that not all infectious substances produce toxins. The comment suggested replacing ''toxic'' with ''toxic and/or infectious'' in proposed §§ 314.600 and 601.60 (§ 601.90 in this final rule).

The rule is certainly intended to cover products for treatment of infections. At some level, an infectious agent that is lethal or permanently disabling is toxic to its host, even if that agent is not itself a ''toxin'' or a producer of ''toxins'' within a strict definition of the word. Because we do not use ''toxin'' in the rule, and ''toxic'' is accurate, we do not believe we need to replace ''toxic'' with ''toxic and/or infectious'' to indicate that products for the treatment of infections may be approved under this rule.

(Comment 3) One comment noted that the proposed rule did not discuss criteria that should be applied in determining if ''an important medical need is not adequately met by currently available therapies.'' The comment suggested that we state that we will use the criteria given in our guidance for industry entitled ''Fast Track Drug Development Programs—Designation, Development, and Application Review'' (September 1998).

We have decided to eliminate the requirement that ''products would be expected to provide meaningful therapeutic benefits to patients over existing treatments,'' as well as the limitation that the toxic agent be ''without a proven treatment'' (proposed §§ 314.600 and 601.60). Recent events involving the multiple exposures to anthrax in our population, and deaths resulting from those infections, have indicated a need for a wide range of therapeutic options that, in some instances, might be inappropriately limited by requiring new products to have a therapeutic benefit over existing treatments, or to be used only in the absence of a proven treatment. Availability of a variety of drug and biological products is important because, for example, patient recipients may be allergic to one product and require another, may be intolerant of a product because of side effects, or may respond more favorably to one product

[2] In some cases, however, such as with anti-infective drug products, it would usually be expected that human data on safety and effectiveness for other indications may be available.

than another. We also believe that a wider variety of therapeutic choices will limit potential problems with availability, accessibility, and distribution of products. We have modified the final rule to address these concerns and help ensure the availability of more than one therapeutic option.

(Comment 4) One comment requested that antivenin and antitoxin products of animal origin be considered for inclusion specifically on the list of new drugs and biological products to which the rule applies.

There is no list of products that may be approved based on evidence of effectiveness from efficacy studies in animals. The rule provides criteria to determine if evidence of effectiveness from efficacy studies in animals may support approval of a product. If an antivenin or antitoxin product of animal origin meets the criteria specified in the rule, it may be approved on the basis of evidence of effectiveness from efficacy studies in animals.

(Comment 5) One comment requested that we revise proposed §§ 314.610 and 601.61 (§ 601.91 in this final rule) to state that substantiation in multiple animal species is required only where appropriate. The comment stated we should not limit ourselves to approvals only when there is substantiation in ''multiple'' animal species. The comment contended that where independent studies in a single species meet the general principles of independent substantiation as described in the guidance for industry entitled ''Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products'' (May 1998), those studies are sufficient to substantiate effectiveness as a matter of science and a requirement of substantiation in multiple species would result in an unnecessary delay of agency approval. According to the comment, these concerns are particularly important where viruses have a narrow host range and conducting efficacy trials in more than one animal species in such cases either is not feasible or provides only limited additional information that is relevant to the full-blown disease in humans. The comment suggested that the requirement of substantiation in multiple species in a given case should depend on the known host range and the availability of animal model systems.

We share some of the concerns expressed in the comment, but we believe the proposed remedy goes too far. Approval of the use of a drug lacking human evidence of effectiveness represents a significant departure from ordinary practice. There are countless examples of treatments with favorable effects in animals that did not prove effective in humans. Although this rule does, for good reason, allow reliance on animal studies when human studies cannot be conducted, in general we expect that the evidence, to be persuasive, should be developed in more than one animal species unless the effect is demonstrated in a single animal species that represents a sufficiently well-characterized animal model for predicting the response in humans. We recognize that conducting studies in more than one species can result in added expense, but we believe this is warranted because of the additional assurance they would provide.

Furthermore, reliance on our guidance entitled ''Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products'' is misplaced. That guidance was drafted to provide advice on the quantity of data from clinical studies needed to support a finding of effectiveness and, specifically, on when the agency ought to rely on a single human study. The guidance addressed cases in which the issue is the credibility of the data itself, not the relevance of the data to humans. In this rule, the issue is the ability of results from animal studies to predict the human response, and not the credibility of the animal finding itself (although, of course, the animal studies should be replicated or substantiated in each species as needed to ensure credible results). The need for multiple species in certain cases is to enhance the likelihood that the data are pertinent to humans.

We do recognize, however, that the multiple species requirement could be inappropriate or unnecessary in certain situations. For example, there may be only one species capable of reacting with a response predictive for humans. This would occur where there is only one nonhuman host for the targeted microorganism. There may also be other situations in which studies in a particular species are specifically well recognized as predictors of effectiveness in humans. Thus, circumstances in which the agency will rely on evidence from studies in one animal species to provide substantial evidence of the effectiveness of these products in humans would generally be limited to situations where the study model is sufficiently well-recognized so as to render studies in multiple species unnecessary. In addition, other human data for the product could provide support for such approvals.

Accordingly, we have changed proposed §§ 314.610 and 601.61 (§ 601.91(c) in this final rule) to require that approval be based on studies in more than one animal species unless the effect is demonstrated in a single animal species that represents a sufficiently well-characterized animal model for predicting the response in humans. The agency believes that demonstrating effectiveness in studies conducted in a single animal species using a well-characterized animal model will most often be done for anti-infective drug products. The pathophysiological mechanisms of infectious diseases are usually very well understood, and animal models for many infectious diseases have been studied for years and are very well characterized.

(Comment 6) One comment suggested we remove the requirement that there be a reasonably well-understood pathophysiological mechanism of the toxicity of the substance and its prevention or substantial reduction by the product. The comment stated it is hard to say when we understand something reasonably well and that, if we decide to retain the requirement, we should state at what level (e.g., cellular, molecular) the mechanism must be understood.

A disease's or toxin's mechanism of action does not need to be understood before a safe and effective treatment or preventative can be devised. Quinine and Jenner's smallpox vaccine were both developed before the acceptance of the germ theory of disease. Neither is there a general requirement that an applicant who is relying on human testing to establish effectiveness demonstrate the mechanism of action of the drug or biological product that is the subject of the marketing application. It is generally sufficient to demonstrate that a product is safe and effective. It is generally not required that an applicant demonstrate how or why the product is safe and effective.

It is true that a pathophysiologic understanding of a disease and treatment is not required when human studies are used to support approval. In the case of human drug or biological products approved on the basis of evidence of effectiveness from studies in animals, however, we are requiring an understanding of the mechanism of the toxic substance or infectious organism and its prevention or reduction by the product. This understanding helps provide assurance that the efficacy data from studies in animals can be applied to humans. We have not specified exactly what degree of pathophysiologic understanding is needed, and that will be a matter of judgment. The level of understanding could range from a complete understanding of how a toxic

substance works at the cellular level in both human and animal cells together with a clear understanding of what the antidote does at the molecular level to a less complete understanding. The level of required understanding of the mechanism of action of the toxic substance or infectious organism and the product may vary from toxic substance to toxic substance or infectious organism to infectious organism and could even vary from one product to another intended to treat the same condition.

(Comment 7) One comment suggested that an institutional review board (IRB) or other ethical scientific review body determine if it would be unethical to conduct studies in humans. The comment also said we do not mention who would make the determination that it would be unethical to conduct studies in humans.

The final determination that it is unethical to conduct studies in humans will be made by the reviewing officials in FDA. We anticipate that in most cases the determination as to whether it would be unethical to conduct studies in humans will not be difficult. In those cases that are difficult, the views of one or more IRBs, individual ethicists and clinicians, and FDA advisory committees could be sought by a sponsor or FDA. A case where such a consultation could be useful is one in which a putatively subtoxic dose would be used in humans to establish at least a mechanism for protection, if not actual protection.

(Comment 8) One comment noted that we said in the proposed rule:

> The agency also intends in most cases to consult on applications to market such products with an advisory committee, supplemented with appropriate expert consultants, in meetings open to the public in order to receive expert advice on whether a particular set of animal data support efficacy of a product under this rule (64 FR 53960 at 53964 and 53965).

The comment asked us to consider requiring consultation with an advisory committee either before conducting the animal studies or before approval of the product, or both.

We want to reiterate our statement in the proposed rule that we intend usually to consult with an advisory committee during the approval process. Indeed, we may consult with an advisory committee more than once on a single product if circumstances warrant it. Consultation with an advisory committee could occur early in the development process, to discuss whether the concept of using certain animal data to support efficacy is reasonable.

Even though consultation with an advisory committee is generally desirable, it is not always practical. For example, products reviewed under this rule may be part of the response to a public health emergency; therefore, there may not be time to convene an advisory committee. Accordingly, we believe that it would be inappropriate to absolutely require consultation with an advisory committee.

(Comment 9) One comment questioned whether patient labeling is adequate to inform patients that a product has been approved on the basis of animal efficacy data, particularly in situations where military personnel are ordered to take a product approved under this rule. The comment did not suggest an alternative to the provisions of the rule.

Sections 314.610(b)(3) and 609.91(b)(3) provide that for products or specific indications approved under this rule, applicants must prepare, as part of their proposed labeling, labeling to be provided to patients or potential patients. The patient labeling, written in language that can be easily understood by the general public, must explain that, for ethical or feasibility reasons, the product's approval was based on efficacy studies conducted in animals alone. The labeling must give the product's indication(s), directions for use (dosage and administration), contraindications, a description of any reasonably foreseeable risks, adverse reactions, anticipated benefits, drug interactions, and any other relevant information required by FDA at the time of approval. If possible, the patient labeling must be available with the product to be provided to patients or potential patients prior to administration or dispensing of the product for the use approved under this rule. We intend that in interpreting §§ 314.610(b)(3) and 601.91(b)(3), the word ''possible'' be given its ordinary and literal meaning. Situations in which it would be inconvenient or require some effort to make the labeling available for patients should not be equated with situations in which it would be impossible to do so.

These provisions, coupled with communications within a health care provider-patient relationship should, as a general matter in both civilian and military contexts, adequately ensure that patients are informed that the product they are taking has been approved based on animal efficacy data.

(Comment 10) One comment suggested that labeling a drug or biological product approved on the basis of evidence of effectiveness from studies in animals as ''FDA approved'' is misleading, because patients would assume that the product had been approved based on human studies. The comment suggested that we treat the product as an investigational new drug, but waive certain requirements generally applied to investigational new drugs, if those requirements would provide obstacles to the product's use in an emergency.

We agree that the labeling would be misleading if information were not included to explain to patients or potential patients that the effectiveness of the product was demonstrated in animals not humans, and that this reliance on animal efficacy data was based on ethical and feasibility concerns. Therefore, under sections 502(a) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a) and 372(a)) (and consistent with the legal authority cited in the preamble to the proposed rule (64 FR 53960 at 53964)), we have revised the language in §§ 314.610(b)(3) and 601.91(b)(3) to require that this information be included in the patient labeling.

Where the evidence of effectiveness comes from studies in animals, regulating new drug or biological products as investigational drugs presents several difficulties. These difficulties have led us to this rulemaking. The proposed rule describes our concerns with relying solely on the investigational new drug regulations (64 FR 53960 at 53963) for such approvals. There may be cases, however, when an application does not meet the criteria of this rule, and approval of the product is not feasible. Should an emergency situation arise under such circumstances, it is conceivable that the product could be used under the investigational new drug regulations.

(Comment 11) Another comment suggested that, unless ''lay persons'' may use the product, we prohibit advertising of drug or biological products approved on the basis of evidence of effectiveness from studies in animals. The comment further recommended stringent controls on the advertising of products that could be used by ''lay persons.''

Such a sweeping prohibition would likely give rise to constitutional issues regarding the regulation of commercial speech. In addition, the suggestion presents serious public health concerns. A prohibition on advertising could limit health care providers' and public health and emergency preparedness officials' awareness of the products approved under this rule. Limiting awareness of these products, which are intended to

reduce or prevent life-threatening or disabling toxicity, does not seem desirable or appropriate.

We believe that the advertising provisions in §§ 314.640 and 601.94 of this rule provide adequate protection against false or misleading advertising, and no additional requirements are needed. As discussed in the preamble to the proposed rule (64 FR 53960 at 53964), we proposed the requirements pertaining to promotional materials in order to provide for the safe and effective use of these products. These requirements, along with others, are similar to those in the accelerated approval regulations in subpart H of part 314 and in subpart E of part 601. In issuing the accelerated approval regulations, we stated that the special circumstances under which those products would be approved and the possibility that promotional materials could adversely affect the sensitive risk/benefit balance justified review of promotional materials before and after approval (57 FR 58942 at 58949). Similarly, the special circumstances of all product approvals under subpart I of part 314 and subpart H of part 601 and the possibility that promotional materials could adversely affect the even more sensitive risk/benefit balance justifies advance review of promotional materials.

We intend to review all such promotional materials under these new regulations promptly, and to notify the applicant of any identified problems as soon as possible (see also 57 FR 58942 at 58950). Also as with the accelerated approval regulations' requirements for promotional materials (§§ 314.560 and 601.46), FDA may terminate the requirements for advance submission of promotional materials under these new regulations at §§ 314.650 and 601.95 if the agency determines, on its own initiative or in response to a petition submitted by the sponsor, that the requirements are no longer necessary for safe and effective use of the product. When we remove the requirement for advance submission of promotional materials, we will continue to offer a prompt review of all voluntarily submitted promotional materials.

(Comment 12) We received some comments addressing questions posed in section VII, ''Discussion,'' of the proposed rule. In this final rule, we have addressed comments that dealt with the rule itself. Comments that dealt with questions related to the application of this rule, rather than the requirements, will be addressed if and when we draft a guidance on this subject.

III. Legal Authority

We did not receive any comments discussing our legal authority to approve new drugs and biological products based on evidence of effectiveness from studies in animals. We have concluded, for the reasons set out in section V of the proposed rule, ''Legal Authority,'' (64 FR 53960 at 53964), that we have the legal authority to approve new drugs and biological products based on evidence of effectiveness from studies in animals.

(Comment 13) We received a comment asserting that under the court's holding in *American Pharmaceutical Association* v. *Weinberger*, 377 F.Supp. 824 (D.C.D.C. 1974) *aff'd sub nom. American Pharmaceutical Association* v. *Mathews*, 530 F.2d 1054 (D.C. Cir. 1976) (*per curiam*), we do not have the legal authority to impose the distribution controls proposed in §§ 314.610(b) and 601.61(b) (§§ 314.610(b)(2) and 601.91(b)(2) in this final rule). The comment asked that, if we disagree with their characterization of the law, distribution controls not be applied just because a product was approved under the provisions of this rule. The comment also asked that we give examples of situations where we would impose distribution restrictions.

For a full discussion of FDA's authority to impose distribution restrictions to ensure the safe use of drug products, see the agency's proposed and final rules amending part 314 by adding subpart H on accelerated approval of new drugs for serious or life-threatening illnesses (proposed rule at 57 FR 13234, April 15, 1992; final rule at 57 FR 59842, December 11, 1992). Those rules relied on sections 501, 502, 503, 505, and 701 of the act (21 U.S.C. 351, 352, 353, 355, and 372) as authority for FDA to issue regulations to help ensure the safety and effectiveness of new drugs.

We agree with the comment that distribution controls should not be placed on a product solely because it is approved under the provisions of this rule. New §§ 314.610(b)(2) and 601.91(b)(2) authorize distribution controls—they do not require them.

We do not believe it would be useful to give examples of situations where distribution controls may be necessary to ensure safe use of the product. Products approved under this rule could be indicated for widely differing conditions, and those products could be used in unique circumstances presenting many distinct safety concerns. It would not be practical to try to devise a list of representative examples of situations where distribution controls would be appropriate.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of the Unfunded Mandates Reform Act (Public Law 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency has determined that the rule is consistent with the principles set forth in the Executive order and in these statutes. FDA finds that this rule will not have an effect on the economy that exceeds $100 million in any one year (adjusted for inflation). The current inflation-adjusted statutory threshold is about $110 million. Therefore, no further analysis is required under the Unfunded Mandates Reform Act. Because this rule does not impose any new costs on small entities, FDA certifies that this rule will not result in a significant economic impact on a substantial number of small entities. Thus, the agency need not prepare a Regulatory Flexibility Analysis. The agency reached the same conclusions in its proposed rule. FDA has not received any new information or comments that would alter its previous determinations.

VII. The Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: New Drug and Biological Products; Animal Efficacy Studies.

Description: FDA is amending its new drug and biological product regulations to allow appropriate studies in animals in certain cases to provide substantial evidence of effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances when adequate and well-controlled efficacy studies in humans cannot be ethically conducted because the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers and field trials are not feasible prior to approval. In these circumstances, when it may be impossible to demonstrate effectiveness through adequate and well-controlled studies in humans, FDA is providing that certain new drug and biological products intended to treat or prevent serious or life-threatening conditions could be approved for marketing based on studies in animals, without the traditional efficacy studies in humans. FDA is taking this action because it recognizes the importance of improving medical response capabilities to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Respondent Description: Businesses and other for-profit organizations, and nonprofit institutions.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
314.610(b)(2) and 314.630 601.91(b)(2) and 601.93	1	1	1	5	5
314.610(b) and 314.640 601.91(b) and 601.94	1	1	1	240	240
Total					245

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL DISCLOSURE/RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
314.610(b)(2) and 314.630 601.91(b)(2) and 601.93	1	1	1	1	1
314.610(b) 601.91(b)	1	1	1	1	1
Total					2

[1]There are no capital costs or operating and maintenance costs with this collection of information.

FDA estimates that only one application of this nature may be submitted every 3 years; however, for calculation purposes, FDA is estimating the submission of one application annually. FDA estimates 240 hours for a manufacturer of a new drug or biological product to develop patient labeling and to submit the appropriate information and promotional labeling to FDA. At this time, FDA cannot estimate the number of postmarketing reports for adverse drug or biological experiences associated with a newly approved drug or biological product. Therefore, FDA is using one report for purposes of this information collection. These reports are required under parts 310 and 600 (21 CFR parts 310 and 600), and 314. Any burdens associated with these requirements will be reported under the adverse experience reporting (AER) information collection requirements. The estimated hours for postmarketing reports range from 1 to 5 hours based on previous estimates for AER; however FDA is estimating 5 hours for the purpose of this information collection.

The majority of the burden for developing the patient labeling is included under the reporting requirements; therefore, minimal burden is calculated for providing the guide to patients. As discussed previously, no burden can be calculated at this time for the number of AER reports that may be submitted after approval of a new drug or biologic. Therefore, the number of records that may be maintained also cannot be determined. Any burdens associated with these requirements will be reported under the AER information collection requirements. The estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

The information collection provisions in this final rule have been approved under OMB control number 0910–0423. This approval expires December 31, 2002. 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.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 314 and 601 are amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

2. Subpart I, consisting of §§ 314.600 through 314.650, is added to read as follows:

Subpart I—Approval of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

Sec.

314.600 Scope.
314.610 Approval based on evidence of effectiveness from studies in animals.
314.620 Withdrawal procedures.
314.630 Postmarketing safety reporting.
314.640 Promotional materials.
314.650 Termination of requirements.

Subpart I—Approval of New Drugs When Human Efficacy Studies Are Not Ethical or Feasible

§ 314.600 Scope.

This subpart applies to certain new drug products that have been studied for their safety and efficacy in ameliorating or preventing serious or life-threatening conditions caused by exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances. This subpart applies only to those new drug products for which: Definitive human efficacy studies cannot be conducted because it would be unethical to deliberately expose healthy human volunteers to a lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substance; and field trials to study the product's effectiveness after an accidental or hostile exposure have not been feasible. This subpart does not apply to products that can be approved based on efficacy standards described elsewhere in FDA's regulations (e.g., accelerated approval based on surrogate markers or clinical endpoints other than survival or irreversible morbidity), nor does it address the safety evaluation for the products to which it does apply.

§ 314.610 Approval based on evidence of effectiveness from studies in animals.

(a) FDA may grant marketing approval for a new drug product for which safety has been established and for which the requirements of § 314.600 are met based on adequate and well-controlled animal studies when the results of those animal studies establish that the drug product is reasonably likely to produce clinical benefit in humans. In assessing the sufficiency of animal data, the agency may take into account other data, including human data, available to the agency. FDA will rely on the evidence from studies in animals to provide substantial evidence of the effectiveness of these products only when:

(1) There is a reasonably well-understood pathophysiological mechanism of the toxicity of the substance and its prevention or substantial reduction by the product;

(2) The effect is demonstrated in more than one animal species expected to react with a response predictive for humans, unless the effect is demonstrated in a single animal species that represents a sufficiently well-characterized animal model for predicting the response in humans;

(3) The animal study endpoint is clearly related to the desired benefit in humans, generally the enhancement of survival or prevention of major morbidity; and

(4) The data or information on the kinetics and pharmacodynamics of the product or other relevant data or information, in animals and humans, allows selection of an effective dose in humans.

(b) Approval under this subpart will be subject to three requirements:

(1) *Postmarketing studies.* The applicant must conduct postmarketing studies, such as field studies, to verify and describe the drug's clinical benefit and to assess its safety when used as indicated when such studies are feasible and ethical. Such postmarketing studies would not be feasible until an exigency arises. When such studies are feasible, the applicant must conduct such studies with due diligence. Applicants must include as part of their application a plan or approach to postmarketing study commitments in the event such studies become ethical and feasible.

(2) *Approval with restrictions to ensure safe use.* If FDA concludes that a drug product shown to be effective under this subpart can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to ensure safe use of the drug product, commensurate with the specific safety concerns presented by the drug product, such as:

(i) Distribution restricted to certain facilities or health care practitioners with special training or experience;

(ii) Distribution conditioned on the performance of specified medical procedures, including medical followup; and

(iii) Distribution conditioned on specified recordkeeping requirements.

(3) *Information to be provided to patient recipients.* For drug products or specific indications approved under this subpart, applicants must prepare, as part of their proposed labeling, labeling to be provided to patient recipients. The patient labeling must explain that, for ethical or feasibility reasons, the drug's approval was based on efficacy studies conducted in animals alone and must give the drug's indication(s), directions for use (dosage and administration), contraindications, a description of any reasonably foreseeable risks, adverse reactions, anticipated benefits, drug interactions, and any other relevant information required by FDA at the time of approval. The patient labeling must be available with the product to be provided to patients prior to administration or dispensing of the drug product for the use approved under this subpart, if possible.

§ 314.620 Withdrawal procedures.

(a) *Reasons to withdraw approval.* For new drugs approved under this subpart, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the drug product;

(4) The applicant fails to adhere to the postmarketing restrictions applied at the time of approval under this subpart;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the drug product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Drug Evaluation and Research (CDER) will give the applicant notice of an opportunity for a hearing on CDER's proposal to withdraw the approval of an application approved under this subpart. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the **Federal Register** in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of CDER may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner of Food and Drugs' decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 314.630 Postmarketing safety reporting.

Drug products approved under this subpart are subject to the postmarketing recordkeeping and safety reporting requirements applicable to all approved drug products, as provided in §§ 314.80 and 314.81.

§ 314.640 Promotional materials.

For drug products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

§ 314.650 Termination of requirements.

If FDA determines after approval under this subpart that the requirements established in §§ 314.610(b)(2), 314.620, and 314.630 are no longer necessary for the safe and effective use of a drug product, FDA will so notify the applicant. Ordinarily, for drug products approved under § 314.610, these requirements will no longer apply when FDA determines that the postmarketing study verifies and describes the drug product's clinical benefit. For drug products approved under § 314.610, the restrictions would no longer apply when FDA determines that safe use of the drug product can be ensured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30 of this chapter.

PART 601—LICENSING

3. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 15 U.S.C. 1451–1561; 21 U.S.C. 321, 351, 352, 353, 355, 356b, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263, 264; sec. 122, Pub. L. 105–115, 111 Stat. 2322 (21 U.S.C. 355 note).

4. Subpart H, consisting of §§ 601.90 through 601.95, is added to read as follows:

Subpart H—Approval of Biological Products When Human Efficacy Studies Are Not Ethical or Feasible

Sec.

601.90 Scope.
601.91 Approval based on evidence of effectiveness from studies in animals.
601.92 Withdrawal procedures.
601.93 Postmarketing safety reporting.
601.94 Promotional materials.
601.95 Termination of requirements.

Subpart H—Approval of Biological Products When Human Efficacy Studies Are Not Ethical or Feasible

§ 601.90 Scope.

This subpart applies to certain biological products that have been studied for their safety and efficacy in ameliorating or preventing serious or life-threatening conditions caused by exposure to lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substances. This subpart applies only to those biological products for which: Definitive human efficacy studies cannot be conducted because it would be unethical to deliberately expose healthy human volunteers to a lethal or permanently disabling toxic biological, chemical, radiological, or nuclear substance; and field trials to study the product's efficacy after an accidental or hostile exposure have not been feasible. This subpart does not apply to products that can be approved based on efficacy standards described elsewhere in FDA's regulations (e.g., accelerated approval based on surrogate markers or clinical endpoints other than survival or irreversible morbidity), nor does it address the safety evaluation for the products to which it does apply.

§ 601.91 Approval based on evidence of effectiveness from studies in animals.

(a) FDA may grant marketing approval for a biological product for which safety has been established and for which the requirements of § 601.90 are met based on adequate and well-controlled animal studies when the results of those animal studies establish that the biological product is reasonably likely to produce clinical benefit in humans. In assessing the sufficiency of animal data, the agency may take into account other data, including human data, available to the agency. FDA will rely on the evidence from studies in animals to provide substantial evidence of the effectiveness of these products only when:

(1) There is a reasonably well-understood pathophysiological mechanism of the toxicity of the

substance and its prevention or substantial reduction by the product;

(2) The effect is demonstrated in more than one animal species expected to react with a response predictive for humans, unless the effect is demonstrated in a single animal species that represents a sufficiently well-characterized animal model for predicting the response in humans;

(3) The animal study endpoint is clearly related to the desired benefit in humans, generally the enhancement of survival or prevention of major morbidity; and

(4) The data or information on the kinetics and pharmacodynamics of the product or other relevant data or information, in animals and humans, allows selection of an effective dose in humans.

(b) Approval under this subpart will be subject to three requirements:

(1) *Postmarketing studies.* The applicant must conduct postmarketing studies, such as field studies, to verify and describe the biological product's clinical benefit and to assess its safety when used as indicated when such studies are feasible and ethical. Such postmarketing studies would not be feasible until an exigency arises. When such studies are feasible, the applicant must conduct such studies with due diligence. Applicants must include as part of their application a plan or approach to postmarketing study commitments in the event such studies become ethical and feasible.

(2) *Approval with restrictions to ensure safe use.* If FDA concludes that a biological product shown to be effective under this subpart can be safely used only if distribution or use is restricted, FDA will require such postmarketing restrictions as are needed to ensure safe use of the biological product, commensurate with the specific safety concerns presented by the biological product, such as:

(i) Distribution restricted to certain facilities or health care practitioners with special training or experience;

(ii) Distribution conditioned on the performance of specified medical procedures, including medical followup; and

(iii) Distribution conditioned on specified recordkeeping requirements.

(3) *Information to be provided to patient recipients.* For biological products or specific indications approved under this subpart, applicants must prepare, as part of their proposed labeling, labeling to be provided to patient recipients. The patient labeling must explain that, for ethical or feasibility reasons, the biological product's approval was based on efficacy studies conducted in animals alone and must give the biological product's indication(s), directions for use (dosage and administration), contraindications, a description of any reasonably foreseeable risks, adverse reactions, anticipated benefits, drug interactions, and any other relevant information required by FDA at the time of approval. The patient labeling must be available with the product to be provided to patients prior to administration or dispensing of the biological product for the use approved under this subpart, if possible.

§ 601.92 Withdrawal procedures.

(a) *Reasons to withdraw approval.* For biological products approved under this subpart, FDA may withdraw approval, following a hearing as provided in part 15 of this chapter, as modified by this section, if:

(1) A postmarketing clinical study fails to verify clinical benefit;

(2) The applicant fails to perform the postmarketing study with due diligence;

(3) Use after marketing demonstrates that postmarketing restrictions are inadequate to ensure safe use of the biological product;

(4) The applicant fails to adhere to the postmarketing restrictions applied at the time of approval under this subpart;

(5) The promotional materials are false or misleading; or

(6) Other evidence demonstrates that the biological product is not shown to be safe or effective under its conditions of use.

(b) *Notice of opportunity for a hearing.* The Director of the Center for Biologics Evaluation and Research (CBER) will give the applicant notice of an opportunity for a hearing on CBER's proposal to withdraw the approval of an application approved under this subpart. The notice, which will ordinarily be a letter, will state generally the reasons for the action and the proposed grounds for the order.

(c) *Submission of data and information.* (1) If the applicant fails to file a written request for a hearing within 15 days of receipt of the notice, the applicant waives the opportunity for a hearing.

(2) If the applicant files a timely request for a hearing, the agency will publish a notice of hearing in the **Federal Register** in accordance with §§ 12.32(e) and 15.20 of this chapter.

(3) An applicant who requests a hearing under this section must, within 30 days of receipt of the notice of opportunity for a hearing, submit the data and information upon which the applicant intends to rely at the hearing.

(d) *Separation of functions.* Separation of functions (as specified in § 10.55 of this chapter) will not apply at any point in withdrawal proceedings under this section.

(e) *Procedures for hearings.* Hearings held under this section will be conducted in accordance with the provisions of part 15 of this chapter, with the following modifications:

(1) An advisory committee duly constituted under part 14 of this chapter will be present at the hearing. The committee will be asked to review the issues involved and to provide advice and recommendations to the Commissioner of Food and Drugs.

(2) The presiding officer, the advisory committee members, up to three representatives of the applicant, and up to three representatives of CBER may question any person during or at the conclusion of the person's presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer for response by a person making a presentation.

(f) *Judicial review.* The Commissioner of Food and Drugs' decision constitutes final agency action from which the applicant may petition for judicial review. Before requesting an order from a court for a stay of action pending review, an applicant must first submit a petition for a stay of action under § 10.35 of this chapter.

§ 601.93 Postmarketing safety reporting.

Biological products approved under this subpart are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products.

§ 601.94 Promotional materials.

For biological products being considered for approval under this subpart, unless otherwise informed by the agency, applicants must submit to the agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement.

601.95 Termination of requirements.

If FDA determines after approval under this subpart that the requirements established in §§ 601.91(b)(2), 601.92, and 601.93 are no longer necessary for the safe and effective use of a biological product, FDA will so notify the applicant. Ordinarily, for biological products approved under § 601.91, these requirements will no longer apply when FDA determines that the postmarketing study verifies and describes the biological product's clinical benefit. For biological products approved under § 601.91, the restrictions would no longer apply when FDA determines that safe use of the biological product can be ensured through appropriate labeling. FDA also retains the discretion to remove specific postapproval requirements upon review of a petition submitted by the sponsor in accordance with § 10.30 of this chapter.

Dated: May 23, 2002.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 02–13583 Filed 5–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8998]

RIN 1545–BA74

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations issued under sections 337(d) and 1502. The amendments clarify certain aspects of the temporary regulations relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group. The amendments in these temporary regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective May 31, 2002.

Applicability Date: For dates of applicability *see* § 1.337(d)–2T(g) and 1.1502–20T(i).

FOR FURTHER INFORMATION CONTACT: Sean P. Duffley (202) 622–7530 or Lola L. Johnson (202) 622–7550 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been previously reviewed and approved by the Office of Management and Budget under control number 1545–1774. Responses to this collection of information are voluntary. No material changes to this collection of information are made by these regulations.

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 control number assigned by the Office of Management and Budget.

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

Background

On March 12, 2002, the IRS and Treasury published in the **Federal Register** at 67 FR 11034 (2002–13 I.R.B. 668) temporary regulations under sections 337(d) and 1502 (the temporary regulations). The temporary regulations set forth rules that limit the deductibility of loss recognized by a consolidated group on the disposition of stock of a subsidiary member and that require certain basis reductions on the deconsolidation of stock of a subsidiary member. Section 1.1502–20T(i) of the temporary regulations provides that, in the case of a disposition or deconsolidation of a subsidiary before March 7, 2002, and for such transactions effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of allowable stock loss or basis reduction by applying § 1.1502–20 in its entirety, § 1.1502–20 without regard to the duplicated loss component of the loss disallowance rule, or § 1.337(d)-2T. For dispositions and deconsolidations that occur on or after March 7, 2002, and that are not within the scope of the binding contract rule, § 1.1502–20T(i) provides that allowable loss and basis reduction are determined under § 1.337(d)-2T, not § 1.1502–20.

Explanation of Provisions

Since the publication of the temporary regulations, several questions have been raised concerning the interpretation and application of the temporary regulations. In response to these questions, the IRS and Treasury are promulgating the regulations in this Treasury decision as temporary regulations to clarify and amend the temporary regulations as described below in this preamble. The following paragraphs describe these amendments.

Netting Rule

Commentators requested that § 1.337(d)-2T be amended to provide a netting rule similar to that set forth in § 1.1502–20(a)(4), pursuant to which gain and loss from certain dispositions of stock may be netted. This Treasury decision adds § 1.337(d)-2T(a)(4) to provide such a rule and also adds § 1.337(d)-2T(b)(4), which provides a similar netting rule for basis reductions on deconsolidations of subsidiary stock.

Time For Filing Election Described in § 1.1502–20T(i)

Section 1.1502–20T(i) currently provides that an election to determine allowable loss by applying § 1.1502–20 (without regard to the duplicated loss component of the loss disallowance rule) or § 1.337(d)–2T must be made by including a statement with or as part of the original return for the taxable year that includes the later of March 7, 2002, and the date of the disposition or deconsolidation of the stock of the subsidiary, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due. Commentators noted that this provision may not permit the election to be made on an original return for the 2001 taxable year where the disposition occurs during the 2001 taxable year. The IRS and Treasury believe that it is appropriate to permit the election to be made on such a return. Therefore, this Treasury decision amends § 1.1502–20T(i) to provide that the statement may be filed with or as part of a timely filed (including any extensions) original return for any taxable year that includes any date on or before March 7, 2002. In addition, if the date of the disposition or deconsolidation of the stock of the subsidiary is after March 7, 2002, the statement may be filed with or as part of a timely filed (including any extensions) original return for the taxable year that includes such date. This latter alternative effectively permits the statement to be filed with the original return that includes the date

of the disposition or deconsolidation if, as of March 7, 2002, the disposition or deconsolidation was subject to a binding written contract entered into before March 7, 2002, that was in continuous effect until the date of the disposition or deconsolidation.

Requirements for Perfecting Election Described in § 1.1502–20T(i)

Commentators questioned whether an election to determine allowable loss by applying § 1.1502–20 (without regard to the duplicated loss component of the loss disallowance rule) or § 1.337(d)–2T was valid only if a statement of allowed loss described in § 1.337(d)–2T(c) or 1.1502–20(c), as appropriate, was or is filed with respect to the disposition or deconsolidation of subsidiary stock. The amendments to the temporary regulations in this Treasury decision clarify that no statement other than the one described in § 1.1502–20T(i)(4) is necessary to perfect an election to compute allowable loss or basis reduction by applying the provisions described in § 1.1502–20T(i)(2)(i) or (ii). Therefore, an election pursuant to § 1.1502–20T(i) may be made regardless of whether a statement of allowed loss described in § 1.337(d)–2T(c) or 1.1502–20(c) was or is filed with respect to the disposition or deconsolidation.

In addition, taxpayers determining allowable loss under § 1.1502–20 in its entirety will generally be treated as having satisfied the requirement to file a statement of allowed loss otherwise imposed by § 1.1502–20(c) even if no such statement is filed. Nothing in the temporary regulations or these amendments to the temporary regulations, however, affects the filing requirements regarding the election provided in § 1.1502–20(g).

Effect of Election

Finally, a number of questions have been raised regarding the extent to which the election described in § 1.1502–20T(i) affects a taxpayer's items of income, gain, deduction, or loss other than the loss allowed on a disposition of subsidiary stock. In response to these questions, the temporary regulations are amended to explain that if, pursuant to an election under § 1.1502–20T(i), the loss allowed with respect to a disposition of subsidiary stock is increased, but the year of the disposition (or the year to which such loss would have been carried back or carried forward) is closed, to the extent that the absorption of such excess loss in such year would have affected the tax treatment of another item (*e.g.,* another loss that was absorbed in such year) that has an effect in an open year, the election will affect the treatment of such other item.

In addition, the regulations provide a special rule for situations in which a subsidiary of the group (the disposing member) recognized a loss on the disposition of stock of a lower-tier subsidiary member of the group, the loss was disallowed under § 1.1502–20, and, as a result, a group member's basis in the stock of the disposing member was reduced pursuant to § 1.1502–32 (because the disallowed loss was treated as a noncapital, nondeductible expense). In such cases, to the extent that all or some portion of the disallowed loss is allowed as a result of an election under § 1.1502–20T(i), but such loss would have been properly absorbed or expired in a closed year, the basis in the stock of the disposing member may be increased. This adjustment is to be made for purposes of determining the group's or the shareholder-member's Federal income tax liability for all open years.

Special Analyses

In light of the Federal Circuit's decision in *Rite Aid Corp.* v. *United States,* 255 F.3d 1357 (Fed. Cir. 2001), the temporary regulations were necessary to provide taxpayers with immediate guidance regarding allowable loss and basis reductions in connection with dispositions and deconsolidations of subsidiary stock and to carry out the principles of *General Utilities* repeal pending the issuance of further guidance. These amendments to the temporary regulations clarify those rules and simplify their application in order to ease taxpayer compliance. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(1) and (3). It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by removing the entry for ''Section 1.1502–20T(i)'' and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–20T also issued under the authority of 26 U.S.C. 337(d) and 1502.* * *

Par. 2. In § 1.337(d)–2T, paragraphs (a)(4) and (b)(4) are added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) * * *

(4) *Netting.* Paragraph (a)(1) of this section does not apply to loss with respect to the disposition of stock of a subsidiary, to the extent that, as a consequence of the same plan or arrangement, gain is taken into account by members with respect to stock of the same subsidiary having the same material terms. If the gain to which this paragraph applies is less than the amount of the loss with respect to the disposition of the subsidiary's stock, the gain is applied to offset loss with respect to each share disposed of as a consequence of the same plan or arrangement in proportion to the amount of the loss deduction that would have been disallowed under paragraph (a)(1) of this section with respect to such share before the application of this paragraph (a)(4). If the same item of gain could be taken into account more than once in limiting the application of paragraphs (a)(1) and (b)(1) of this section, the item is taken into account only once.

(b) * * *

(4) *Netting.* Paragraph (b)(1) of this section does not apply to reduce the basis of stock of a subsidiary, to the extent that, as a consequence of the same plan or arrangement, gain is taken into account by members with respect to stock of the same subsidiary having the same material terms. If the gain to which this paragraph applies is less than the amount of basis reduction with respect to shares of the subsidiary's stock, the gain is applied to offset basis reduction with respect to each share deconsolidated as a consequence of the same plan or arrangement in proportion to the amount of the reduction that would have been required under paragraph (b)(1) of this section with

respect to such share before the application of this paragraph (b)(4).

* * * * *

Par. 3. Section 1.1502–20T is amended by revising paragraphs (i)(3)(v) and (i)(4) to read as follows:

§ 1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

* * * * *

(i) * * *

(3) * * *

(v) *Items taken into account in open years*—(A) *General rule.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the election increases the loss allowed with respect to a disposition of subsidiary stock, but the year of the disposition (or the year to which such loss would have been carried back or carried forward) is a year for which a refund of overpayment is prevented by law, to the extent that the absorption of such excess loss in such year would have affected the tax treatment of another item (e.g., another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the election will affect the treatment of such other item. Therefore, if the absorption of the excess loss in the year of the disposition (which is a year for which a refund of overpayment is prevented by law) would have prevented the absorption of another loss (the second loss) in such year and such loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the election makes the second loss available for use in the other year.

(B) *Special rule.* If a member's basis in stock of a subsidiary was reduced pursuant to § 1.1502–32 because a loss with respect to stock of a lower-tier subsidiary was treated as disallowed under § 1.1502–20, then, to the extent such disallowed loss is allowed as a result of an election under paragraph (i) of the section but would have been properly absorbed or expired in a year for which a refund of overpayment is prevented by law or rule of law, the member's basis in the subsidiary stock may be increased for purposes of determining the group's or the shareholder-member's Federal income tax liability in all years for which a refund of overpayment is not prevented by law or rule of law.

* * * * *

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before March 7, 2002, or, if the date of the disposition or deconsolidation of the stock of the subsidiary is after March 7, 2002, then such date, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due (including any extensions). Filing a statement in accordance with the provisions of this paragraph satisfies the requirement to file a ''statement of allowed loss'' otherwise imposed under § 1.1502–20(c)(3) or § 1.337(d)–2T(c)(3). The statement required by this paragraph satisfies the requirement that a statement be filed in order to claim allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii). The statement filed under this paragraph shall be entitled ''Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20T(i)'' and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in § 1.1502–20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in § 1.1502–20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

* * * * *

Approved: May 20, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 20, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–13574 Filed 5–30–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8997]

RIN 1545–BA76

Carryback of Consolidated Net Operating Losses to Separate Return Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains regulations under section 1502 that affect corporations filing consolidated returns. These regulations permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective May 31, 2002.

Applicability Date: These regulations apply to consolidated net operating losses arising in taxable years ending during 2001 and 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate), (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1790. Responses to this collection of information are required to obtain a benefit.

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 control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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

Background

On July 2, 1999, the IRS and Treasury published in the **Federal Register** (64 FR 36092 (1999–2 C.B. 34)) final regulations regarding certain deductions and losses of members that join a consolidated group. These regulations added § 1.1502–21(b)(3)(ii)(B), which permits an acquiring consolidated group to elect to waive, with respect to all consolidated net operating losses attributable to certain acquired members, the portion of the carryback period for which the corporation was a member of another group.

Section 172(b)(1) provides, in part, that a net operating loss for any taxable year must generally be carried back to each of the 2 taxable years preceding the taxable year of the loss. Section 172(b)(3) provides that any taxpayer entitled to a carryback period under section 172(b)(1) may elect to relinquish the carryback period with respect to a loss for any taxable year. An election to relinquish the carryback period under section 172(b)(3) must be made by the due date (including extensions) of the taxpayer's return for the taxable year of the loss and in the manner prescribed by the Secretary. Normally, this election is irrevocable.

Section 172(b)(1)(H), which was enacted as part of the Job Creation and Worker Assistance Act of 2002 (the Act), extended the 2-year carryback period to 5 years for losses arising in taxable years ending during 2001 and 2002 (hereafter, 2001 and 2002). Section 172(j), which was also enacted as part of the Act, allows a taxpayer entitled to the 5-year carryback period under section 172(b)(1)(H) to elect to relinquish that carryback period with respect to a loss for any taxable year. A taxpayer making this election generally must apply the 2-year carryback period set forth in section 172(b)(1), unless the taxpayer also elects to relinquish that carryback period under section 172(b)(3).

As described in Revenue Procedure 2002–40 (2002–23 I.R.B.), in order to give effect to the intent of Congress to allow taxpayers a 5-year carryback period to the maximum extent possible, the Service is permitting any taxpayer that previously elected under section 172(b)(3) to forgo the carryback period for losses arising in 2001 or 2002 to revoke such election in order to take advantage of the 5-year carryback period, provided the taxpayer revokes the election no later than October 31, 2002. Revenue Procedure 2002–40 also permits a taxpayer that filed an application for a tentative carryback adjustment or an amended return using the 2-year carryback period for a net operating loss arising in 2001 or 2002 to file certain forms to claim the 5-year carryback period provided under section 172(b)(1)(H).

Given the enactment of section 172(b)(1)(H) and taxpayers' ability to revoke prior elections under section 172(b)(3) and to make certain other filings in order to take advantage of the 5-year carryback period, the IRS and Treasury believe that it is appropriate to afford certain acquiring consolidated groups that did not make an election described in § 1.1502–21(b)(3)(ii)(B) with respect to certain acquired members an opportunity to waive the portion of the entire carryback period or the portion of the extended carryback period for 2001 and 2002 losses attributable to the acquired members, for pre-acquisition years. In this regard, the regulations in this Treasury decision add § 1.1502–21T(b)(3)(ii)(C), which sets forth two elections.

Pursuant to the first election, an acquiring group may waive the portion of the 5-year carryback period for 2001 and 2002 losses attributable to a member acquired from another group after June 25, 1999, for which the member was a member of another group. While this election effectively permits a waiver of the entire 5-year carryback period to the extent that it is prior to the acquisition with respect to a consolidated net operating loss arising in a particular taxable year, it is only available where none of such losses have previously been carried back to a taxable year of a group of which the acquired member was previously a member.

Pursuant to the second election, an acquiring group may waive the portion of the pre-acquisition carryback period for 2001 and 2002 losses attributable to a member acquired from another group to the extent that the Act increased the carryback period for such losses. This second election effectively permits a waiver of the third, fourth, and fifth carryback years to the extent that such years are prior to the acquisition and is available even where 2001 or 2002 losses have been carried back to the first or second carryback years of the acquired member that are pre-acquisition years. This second election, however, is only available with respect to consolidated net operating losses arising in a particular taxable year where none of such losses have been carried back to a taxable year of a group of which the acquired member was previously a member that is prior to the second taxable year preceding the taxable year of the loss.

Unlike the election under § 1.1502–21(b)(3)(ii)(B), the elections provided in these regulations apply only to losses for 2001 and 2002. In addition, the elections are made on a year-by-basis. That is, one election may be made for 2001 losses while another election, or no election, may be made for 2002 losses. An election that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. An election that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed

with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

If the acquiring consolidated group files or filed a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to the acquisition of a member, no election under § 1.1502–21T(b)(3)(ii)(C) needs to be (or should be) filed to ensure that 2001 or 2002 losses are not carried back to pre-acquisition years of the acquired member.

Special Analyses

These temporary regulations are necessary to provide taxpayers with immediate elective relief from section 172(b)(1)(H), which was enacted as the part of the Job Creation and Worker Assistance Act of 2002. These regulations permit certain acquiring consolidated groups to elect to waive the 5-year carryback period with respect to certain acquired members. The regulations apply to losses arising in taxable years ending in 2001 and 2002. Based on these considerations, it is determined that this temporary regulation will provide taxpayers with the necessary guidance and authority to ensure equitable administration of the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 USC 553(b)(B) and delayed effective date is not required pursuant to 5 USC 553(d)(1) and (3).

Further, it has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Marie Milnes-Vasquez. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–21T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–21 is amended by adding paragraph (b)(3)(ii)(C) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) [Reserved]. For further guidance, see § 1.1502–21T(b)(3)(ii)(C).

* * * * *

Par. 3. Section 1.1502–21T is added to read as follows:

§ 1.1502–21T Net operating losses (temporary).

(a) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502–21(a) through (b)(3)(ii)(B).

(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1) Application.* The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502–21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(*2*) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–21T(b)(3)(ii)(C)(*2*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].'' Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*3*) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(*4*) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled ''THIS IS AN ELECTION UNDER SECTION 1.1502–

21T(b)(3)(ii)(C)(*3*) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].'' Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(*5*) of this section.

(*4*) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(*2*) and (*3*) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(*5*) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(*2*) or (*3*) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

(iii) through (h) [Reserved]. For further guidance, see § 1.1502–21(b)(3)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–21T	1545–1790
* * * * *	

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: May 20, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–13576 Filed 5–30–02; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

RIN 1212–AA82

PBGC Benefit Payments; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: The Pension Benefit Guaranty Corporation's final rule on PBGC Benefit Payments, published on April 8, 2002 (at 67 FR 16950), contains an inadvertent error relating to the PBGC's regulation on Allocation of Assets in Single-Employer Plans. This document corrects that error.

EFFECTIVE DATE: June 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, 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: On April 8, 2002 (at 67 FR 16950), the PBGC published a final rule on PBGC Benefit Payments. That final rule inadvertently (1) drops existing regulatory text from § 4044.13(b) of the PBGC's regulation on Allocation of Assets in Single-Employer Plans; and (2) omits two conforming amendments in the text that was dropped from that regulation. The conforming amendments that were omitted were included in the PBGC's proposed rule on PBGC Benefit Payments published December 26, 2000 (at 65 FR 81456). This document corrects that error.

In rule document 02–8340, make the following corrections:

PART 4044—[CORRECTED]

§ 4044.13 [Corrected].

1. On page 16959, in the second column, correct amendatory instruction 17 to read as follows:

17. Amend § 4044.13 as follows:

a. Revise paragraphs (a), (b) introductory text, and (b)(1);

b. In paragraph (b)(2)(i), revise the second sentence; and

c. In paragraph (b)(5), remove ''before the beginning'' and add ''on or before the first day'' in their place.

The revisions read as follows:

2. On page 16959, in the third column, following paragraph (b)(1)(iii), add the following text:

§ 4044.13 Priority category 3 benefits.

* * * * *

(b) * * *

(2) * * *

(i) * * * Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. * * *

* * * * *

Issued in Washington, DC, this 24th day of May, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–13656 Filed 5–30–02; 8:45 am]

BILLING CODE 7708–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 212

[Docket No. RM 2002–3]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing a final rule establishing adjusted fees for certain of its services. The basic fee for registration of an original work of authorship is not affected; however, related registration and recordation fees will be adjusted. These adjustments include a number of increased fees, the elimination of one fee, and the lowering of another. Adjusted fees will be effective July 1, 2002. This final rule assumes that no legislative action will take place before July 1, 2002.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel or Patricia Sinn, Senior Attorney, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: This final rule adjusts Copyright Office fees in accordance with the applicable provisions of title 17, United States Code, and the Technical Amendments Act, Pub. L. No. 105–80, 111 Stat. 1529 (1997).

The Office submitted its proposed fee schedule to Congress on February 28, 2002. Congress has 120 days in which it could enact a law if it does not approve the schedule. If no such legislation is enacted the fees may be instituted. Should such legislation be enacted, the Copyright Office will publish a document in the **Federal Register** to notify its customers that this final rule and certain of the fees established herein will not take effect. Copyright customers should refer to the official Copyright Office website (*www.copyright.gov*) for the most current fee amounts. Official notices of any fee changes will also be published in the **Federal Register**.

Background

Statutory Provisions

In 1997 Congress authorized the Register of Copyrights to implement fees for services that were formerly set by Congress under a new procedure which first required the Register to conduct a study of the costs incurred for the registration of claims, the recordation of documents, and the provision of services. If the Register determines that fees should be adjusted after the review of all statutory criteria, the Register prepares a proposed fee schedule and submits the schedule and the accompanying economic analysis to Congress. The fees proposed in that schedule may be instituted in 120 days unless Congress enacts a law within that 120 day period stating that it does not approve the schedule. Technical Amendments Act, Pub L. 105–80, 111 Stat. 1529 (1997).

In 1998, the Copyright Office initiated a process to adjust fees by publication of a notice. 63 FR 43426 (August 13, 1998). At the end of the process, the Register forwarded a report with a proposed fee schedule to Congress on February 1, 1999, and increased most of its fees including the basic registration fees on July 1, 1999. *See* 64 FR 29518 (June 1, 1999). Implementation of the new system established by Congress means that the Office's fee schedule for certain services specified in title 17 as well as other special services is set out in regulations rather than in title 17. *See* 37 CFR 201.3.

Fee Adjustment Level

When it adjusted fees in 1998–1999, the Office decided that it should next consider adjusting fees three years after that adjustment. Following a cost analysis initiated in fiscal year 2000, and completion of the other necessary steps, the Register forwarded a proposed fee schedule and the accompanying economic analysis to Congress on February 28, 2002. In the absence of legislation directing otherwise, the new fee schedule will take effect on July 1, 2002.

The proposed new fee schedule was submitted after the Office had both (1) completed the economic analysis required, evaluating the costs of providing the mandatory services identified in title 17, and (2) made a determination that the other statutory criteria, including the requirement that fees ''should also be fair and equitable and give due considerations to the objectives of the copyright system,'' 17 U.S.C. 708(b)(4), had been met.

At the conclusion of this analysis, the Register concluded that a number of fees needed to be increased to recover the full cost of providing the service; certain other fees needed to be increased slightly by the rate of inflation to maintain cost recovery; and the rest of the fees based on current and projected cost recovery should not be adjusted at this time. Services for which fees were increased to achieve or maintain cost recovery for providing the service include making a renewal registration, registering an original vessel hull design, recording a document, searching and preparing a report from Copyright Office records, and recording a designated online service provider agent.

For a number of reasons, the Register determined that an adjustment of the basic registration filing fee, which the Office had increased by 50% in 1999, was not warrented at this time. In her submission to Congress, the Register noted the level of cost recovery registration fees enjoyed in FY 2000 and FY 2001, the large increases imposed on the public in recent years, the negative effects of the decline in registrations that follow every fee increase, the costs associated with increasing the fee, and the changes in processing anticipated from the Copyright Office's business process re-engineering effort.

For public policy reasons, the Office eliminated the fee for inspection of Copyright Office records and also reduced the minimum cost for the first 15 pages of photocopying. Other statutory fees remain at the same level set in 1999.

In July of 1998, the Office adjusted non-statutory fees in a separate proceeding. For convenience, the non-statutory fees are slated for adjustment on the same schedule as statutory fees.

The ''Analysis and Proposed Copyright Fee Schedule To Go Into Effect July 1, 2002'' which was submitted to Congress is posted online at *http://www.copyright.gov/reports/fees2002.html,* in PDF format.

Other Considerations

As discussed above, this final rule establishes copyright fees for certain services adjusted in the manner required by Congress. Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law). The Office did post the proposed schedule on its website and is publishing the new fees in the **Federal Register** more than 30 days before they go into effect.

Regulatory Flexibility Act

Although the Copyright Office, as a department of the Library of Congress and part of the legislative branch, is not an ''agency subject to the Regulatory Flexibility Act,'' 5 U.S.C. 601–612, the Register of Copyrights has considered the effect of these fee adjustments on individual authors and small entities. The Register does not propose increasing the basic registration fee and has issued more regulations permitting group registrations for individual authors. The Register has determined that the final regulations will not have a significant economic impact on a substantial number of individual authors or small entities that would require provision of special relief for small entities in the regulations, and that the final regulations are, to the extent consistent with the stated objectives of applicable statutes, designed to minimize any significant economic impact on small entities.

A comparison of existing and new fee amounts is included as an Appendix to the preamble.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 212

Design, Fees, Registration, Vessel hulls.

Final Rule

In consideration of the foregoing, parts 201 and 212 of 37 CFR chapter II are amended as follows:

PART 201–GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.3(c) and (d) are revised to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) *Registration, recordation and related service fees.* The Copyright Office has established the following fees for these services:

Registration, recordation and related services	Fees
(1) Registration of a basic claim in an original work of authorship: Forms TX, SE, PA, VA (including Short Form) and Form SR	$30
(2) Registration of a claim in a group of contributions to a periodical (GR/CP)	30
(3) Registration of a renewal claim (Form RE):	
Claim without Addendum	60
Addendum	30
(4) Registration of a claim in a mask work (Form MW)	75
(5) Registration of a claim in a group of serials (Form SE/Group) [per issue, with $45 minimum]	15
(6) Registration of a claim in a group of daily newspapers and qualified newsletters (Form G/D N)	55
(7) Registration of a claim in a restored copyright (Form GATT)	30
(8) Registration of a claim in a group of restored works (Form GATT/Group) [per issue, with $45 minimum]	15
(9) Registration of a correction or amplification to a claim (Form CA)	100
(10) Providing an additional certificate of registration	30
(11) Certification of other Copyright Office records (per hour)	80
(12) Search—report prepared from official records (per hour)	75
(13) Location of Copyright Office records (per hour)	80
Location of in-process materials (per hour)	100
(14) Recordation of document (single title)	80
Additional titles (per group of 10 titles)	20
(15) Recordation of a Notice of Intention to Enforce (NIE) a restored copyright containing no more than one title	30
Additional NIE titles (each)	1
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12
(17) Issuance of a receipt for a § 407 deposit	10

(d) *Special service fees.* The Copyright Office has established the following fees for special services:

Special services	Fees
(1) Service charge for deposit account overdraft	$100
(2) Service charge for dishonored deposit account replenishment check	35
(3) Appeals:	
(i) First appeal	200
Additional claim in related group	20
(ii) Second appeal	500
Additional claim in related group	20
(4) Secure test processing charge, per hour	60
(5) Copying of Copyright Office Records by staff, per page (black & white)	.50
(6) Special handling fee for a claim	580
Each additional claim using the same deposit	50
(7) Special handling fee for recordation of a document	330
(8) Full-term retention of a published deposit	425
(9) Expedited Reference and Bibliography search and report (surcharge, per hour)	250
(10) Expedited Certification & Documents services (surcharge, per hour)	200

* * * * *

§ 201.38 [Amended]

3. Section 201.38 is amended as follows:

a. In paragraph (e), remove ''$20.00'' and add ''$30'' in its place.

b. In paragraph (f), remove ''$20.00'' and add ''$30'' in its place.

PART 212—PROTECTION OF VESSEL HULL DESIGNS

4. The authority citation for Part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

§ 212.2 [Amended]

5. Section 212.2 is amended as follows:

a. In paragraphs (a) and (b), remove ''$75'' each place it appears and add ''$140'' in its place.

b. In paragraph (d)(1), remove ''$500'' and add ''$580'' in its place.

c. In paragraph (e), remove ''$65'' and add ''$100'' in its place.

d. In paragraph (f), remove ''$50'' and add ''$80'' in its place.

e. In paragraph (g), remove ''$25'' and add ''$30'' in its place.

f. In paragraph (h), remove ''$65'' and add ''$75'' in its place.

§ 212.5 [Amended]

6. In § 212.5(c)(4), remove ''$50'' and add ''$80'' in its place.

Dated: May 16, 2002.

Marybeth Peters,

Register of Copyright.

Approved by:

James H. Billington,

The Librarian of Congress.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX.—COMPARISON OF EXISTING AND NEW FEE AMOUNTS

	Old Fee	Fee
Registration, Recordation and Related Service		
(1) Registration of a basic claim in an original work of authorship (Forms TX, SE, PA, SR, VA including Short Form and Form SR).	$30	$30
(2) Registration of a claim in a group of contributions to a periodicals (GR/CP)	30	30
(3) Registration of a renewal claim (Form RE) claim without addendum	45	60
RE addendum	15	30
(4) Registration of a claim in a mask work (Form VA)	75	75
(5) Registration of a claim in a group of serials (Form SE/Group)	10/issue—30 minimum	15/issue—45 minimum
(6) Registration of a claim in a group of daily newspapers, and qualified newsletters (Form G/DN)	55	55
(7) Registration of a restored copyright (Form GATT)	30	30
(8) Registration of a claim in a group of restored works (Form GATT/Group)	10/claim—30 minimum	15/claim—45 minimum
(9) Registration of a claim in a vessel hull (§ 212.2)	75	140
(10) Registration of a correction or amplification to a claim (Form CA)	65	100
(11) Providing an additional certificate of registration	25	30
(12) Certification of other Copyright Office records (per hour)	65	80
(13) Search—report prepared from official records (per hour)	65	75
Location and retrieval of Copyright Office records (per hour)	65	80
Location and retrieval of in-process materials (per hour)	65	100
(14) Recordation of document (single title)	50	80
Additional titles (per group of 10 titles)	20	20
(15) Recordation of a notice of intention to enforce (NIE) a restored copyright containing no more than one title.	30	30
Additional NIE titles (each)	1	1
(16) Recordation of Notice of Intention to Make and Distribute Phonorecords	12	12
(17) Issuance of a Receipt for a § 407 deposit	4	10
(18) Recording on-line service provider designation (§ 201.38)	20	30
Special Services		
(1) Service charge for deposit account overdraft	$70	$100
(2) Service charge for dishonored deposit account replenishment check	35	35
(3) Appeals:		
(i) First appeal	200	200
Additional claim in related group	20	20
(ii) Second appeal	500	500
Additional claim in related group	20	20
(4) Secure test processing charge, per hour	60	60
(5) Copying of Copyright Office Records by staff, per page (black & white)	$15 min	.50
(6) Inspection Charge (per hour)	65	N/A
(7) Special handling fee for a claim	500	580
Each additional claim using the same deposit	50	50
(8) Special handling fee for recordation of a document	330	330
(9) Full-term retention of a published deposit	365	425
(10) Expedited Bibliography and Reference search & report (surcharge, per hour)	125/first hr. 95/add'l hrs.	250
(11) Expedited Certification & Documents (surcharge, per hour)	variable ($75–$95/hour)	200

[FR Doc. 02–13387 Filed 5–30–02; 8:45 am]
BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN141–1a; FRL–7213–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on July 18, 2000, with additional material submitted on January 11, 2002 and March 13, 2002. The revised SIP pertains to vapor tightness standards for the loading of gasoline cargo tanks at bulk gasoline terminals and pipeline breakout stations in Indiana. The purpose of this action is to approve amendments to Indiana's gasoline transport testing requirements which will tighten current state rules. These amendments are based on EPA's National Emissions Standard for Hazardous Pollutants (NESHAP) for Bulk Gasoline Terminals and Pipeline Breakout Stations, which includes new vapor tightness standards for gasoline cargo tanks, in addition to a pressure standard for the internal valve of the tanks.

DATES: This rule is effective on July 30, 2002, unless EPA receives adverse written comments by July 1, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Patricia Morris, Acting Chief,

Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of this SIP revision request are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,Telephone: (312)886–6061, E-Mail: acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the term ''me'' refers to the reader of this rulemaking and the terms ''we,'' ''us,'' or ''our'' refer to the EPA.

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I. Background

A. What Is a SIP?

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the federally enforceable SIP.

Each federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling attainment demonstrations.

B. What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state has adopted a rule, regulation, or emissions control strategy it submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If we receive adverse comments we address them prior to any final federal action (we generally address them in a final rulemaking action).

The EPA incorporates into the federally approved SIP all state regulations and supporting information it has approved under section 110 of the Act. Records of such SIP actions are maintained in 40 CFR, part 52, titled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations the EPA has approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that EPA has approved a given state regulation (or rule) with a specific effective date.

C. What Does Federal Approval of a State Rule Mean to Me?

Enforcement of a state rule before and after it is incorporated into a federally approved SIP is primarily a state responsibility. After the rule is federally approved as part of the SIP, however, it becomes enforceable by the EPA, which can then take enforcement actions against violators. The CAA also offers citizens legal recourse to address SIP violations, as provided in section 304 of the Act.

D. What Is Section 112 of the Clean Air Act?

Section 112 of the Clean Air Act Amendments of 1990 requires that the EPA develop regulations for the control of hazardous air pollutant (HAP) emissions from major sources. On July 16, 1992, EPA published a list of source categories that emit one or more of these air toxics. For listed categories of major sources (those that emit 10 tons/year or more of a listed pollutant or 25 tons or more of a combination of pollutants), the Act requires EPA to develop standards that will reflect the application of maximum achievable control technology (MACT). On December 14, 1994 (59 FR 64303), EPA issued a final NESHAP for Bulk Gasoline Terminals and Pipeline Breakout Stations, 40 CFR part 63, Subpart R, which includes new vapor tightness standards for gasoline transports and a pressure standard for the tank internal vapor valve. EPA later published amendments changing compliance dates and making other corrections and clarifications (60 FR 7627, February 8, 1995; 60 FR 32912, June 26, 1995; 61 FR 7718, February 29, 1996; 62 FR 9087, February 28 1997). The CAA authorizes states to implement and enforce the NESHAP upon EPA approval.

E. What Is the Purpose of Indiana's Gasoline Transport Testing Requirements?

Indiana's gasoline transport requirements contained in 326 IAC Article 8 provide for vapor tightness standards for the loading of gasoline cargo tanks at bulk gasoline terminals and pipeline breakout stations in Indiana.

Current State regulations at 326 IAC 8–4–7 (Gasoline transports) and 326 IAC 8–4–9 (Leaks from transports and vapor collection systems; records) require that gasoline transports loading at bulk gasoline terminals and pipeline breakout stations be vapor tight and tested annually for vapor tightness, following procedures consistent with Appendix A of ''Control of Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' EPA–450/2–78–051. The regulations apply to transport loading at terminals and breakout stations in Clark, Elkhart, Floyd, Hendricks, Lake, Marion, Porter, St. Joseph, Boone, Dearborn, Hamilton, Hancock, Harrison, Johnson, Morgan, and Shelby counties, and to all new sources.

Gasoline emissions are a significant source of air pollution within the State of Indiana. The amendments to 326 IAC Article 8 will tighten vapor standards for the loading of gasoline transports and will reduce HAP emissions, as well as volatile organic compound (VOC) emissions that contribute to the formation of ozone.

F. What Public Review Opportunities Did Indiana Provide for This Rule?

Indiana held public hearings on this rule on December 2, 1998 and May 5, 1999, in Indianapolis, Indiana. The Indiana Air Pollution Control Board adopted final rules on May 5, 1999. The rule revisions became effective

November 5, 1999, and were formally submitted to EPA on July 18, 2000, as a revision to the Indiana SIP for ozone. In addition, Indiana submitted two addendums on January 11, 2002 and March 13, 2002 correcting typographical, clerical, or spelling errors found in the final rules submitted on July 18, 2000.

II. Evaluation of the Rule

A. What Are the Changes to the State's Gasoline Transport Testing Requirements?

Indiana's amendments to 326 IAC 8–4–7 (Gasoline transports) and 326 IAC 8–4–9 (Leaks from transports and vapor collection systems; records) expand the NESHAP's new standards to apply to gasoline transports loading at all sources in the previously named counties and to new sources.

The NESHAP for Bulk Gasoline Terminals and Pipeline Breakout Stations (40 CFR part 63, subpart R) establishes an internal vapor valve pressure standard and more stringent limits for maximum allowable pressure or vacuum change in ''Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test,'' 40 CFR part 60, appendix A, Method 27, commonly referred to as the ''modified Method 27 test.'' The Indiana rule amends the testing requirement in 326 IAC 8–4–9 (Leaks from transports and vapor collection systems; records) for gasoline transports in order to be consistent with the standards in the modified Method 27 test.

The Indiana rule also expands the definition of ''leak'' in 326 IAC 8–4–7(a)(3), consistent with that found in the NESHAP at 40 CFR 63.425(f), and revises language in 326 IAC 8–4–7 to allow the use of instruments, in addition to visible detection, to detect leaks in gasoline transports. The rule adds the same definition of ''leak'' to 326 IAC 8–4–9(d) and changes the test method for vapor balance systems to be consistent with current test methods found at 40 CFR part 60, appendix A, Method 21. In addition, 326 IAC 20–10–1 (Applicability; incorporation by reference of federal standards) incorporates by reference the portions of the NESHAP for Bulk Gasoline Terminals and Pipelines Breakout Stations, 40 CFR part 63, subpart R, pertaining to the new standards.

The rest of the changes to the rule are administrative in nature and are intended to enhance the clarity of the rule.

B. Is This Rule Approvable?

Our review of the material submitted indicates that the changes made to the Indiana gasoline transports rule address and exceed the federal program requirements. These rule revisions are, therefore, approvable.

III. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to Indiana's gasoline transport testing requirements. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by July 1, 2002. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on July 30, 2002.

IV. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by July 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 9, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770, is amended by adding paragraph (c)(150) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(150) On July 18, 2000 the Indiana Department of Environmental Management submitted a State Implementation Plan (SIP) revision amending certain provisions of Indiana's gasoline transport testing requirements with additional material submitted on January 11, 2002 and March 13, 2002. The Air Pollution Control Board amended 326 IAC 8–4–7 and 326 IAC 8–4–9 and added 326 IAC 20–10.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 8–4–7; 8–4–9; and 20–10–01 adopted May 5, 1999, effective November 5, 1999.

(ii) Additional materials.

(A) July 18, 2000 letter and enclosures from the Indiana Department of Environmental Management (IDEM) Commissioner to the Regional Administrator of the United States Environmental Protection Agency (EPA) submitting Indiana's revision to the ozone SIP.

(B) January 11, 2002 letter and enclosures from IDEM to EPA submitted as an addendum to the July 18, 2000 revision to the ozone SIP.

(C) March 13, 2002 letter and enclosures from IDEM to EPA submitted as an addendum to the July 18, 2000 revision to the ozone SIP.

[FR Doc. 02–13516 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The Bureau of Land Management (BLM) published a final rule in the **Federal Register** of May 6, 2002, containing the new address of the BLM Oregon State Office, which moved in January 2002. Inadvertently, we omitted the amendatory language for the change. This document corrects that error.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Michael H. Schwartz, (202) 452–5198. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: The BLM published a final rule in the **Federal Register** of May 6, 2002, containing the new address of the BLM Oregon State Office, which moved in January 2002. Inadvertently, we omitted amendatory language for the change. This document corrects that error.

In the **Federal Register** of May 6, 2002 (67 FR 30329), in the first column of page 30329, following the authority citation, add the following amendatory language:

2. Amend § 1821.10 by revising paragraph (a) to read as follows:

Dated: May 28, 2002.

Michael H. Schwartz,

Group Manager, Regulatory Affairs.

[FR Doc. 02–13737 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 162

[CMS–0047–F]

RIN 0938–AI59

Health Insurance Reform: Standard Unique Employer Identifier

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a standard for a unique employer identifier and requirements concerning its use by health plans, health care clearinghouses, and health care providers. The health plans, health care clearinghouses, and health care providers must use the identifier, among other uses, in connection with certain electronic transactions.

The use of this identifier will improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information. It will implement some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

EFFECTIVE DATE: This regulation is effective July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia Peyton, (410) 786–1812.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. You may also obtain a copy from the following web sites:

http://www.access.gpo.gov/nara/index.html; http://aspe.hhs.gov/admnsimp/.

I. Background

Employers may need to be identified when they transmit information to health plans to enroll or disenroll an employee as a participant in a health plan. Employers, health care providers, and health plans may need to identify the source or receiver of eligibility or benefit information. Although the source is usually a health plan, it could be an employer. Employers and health plans may need to identify the employer when making or keeping track of health plan premium payments or contributions relating to an employee. In all cases, in health care transactions, where information about the employer is transmitted electronically, it will be beneficial to identify the employer using a standard identifier.

A. Legislation

The Congress included provisions to address the need for a standard unique employer identifier and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, which became effective on August 21, 1996. Through subtitle F of title II of that law, the Congress added to title XI of the Social Security Act a new part C, titled Administrative Simplification (Public Law 104–191) affects several titles in the United States Code. Hereafter, we refer to the Social Security Act as the Act; we refer to the other laws cited in this document by their names.) The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic transmission of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on the Secretary, health plans, health care clearinghouses, and certain health care providers concerning electronic transmission of health information, and security and privacy.

We discussed the legislation in greater detail in a final rule for Standards for Electronic Transactions (the Transactions Rule) published on August 17, 2000 (65 FR 50312), and in a final rule for Privacy of Individually Identifiable Health Information (the Privacy Rule), published on December 28, 2000 (65 FR 82462). Rather than repeating the discussion here, we refer the reader to those documents for further information.

Section 1172 of the Act makes any standard adopted under part C applicable to (1) all health plans, (2) all health care clearinghouses, and (3) any health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1173 (a)(1).

In complying with the requirements of part C of title XI, the Secretary must rely on the recommendations of the National Committee on Vital Health Statistics (NCVHS), consult with appropriate State, Federal, and private agencies or organizations, and publish the recommendations of the NCVHS in the **Federal Register**.

Paragraph (b) of section 1173 of the Act requires the Secretary to adopt standards for unique health identifiers for all employers (in addition to identifiers for individuals, health plans, and health care providers) for use in the health care system, and requires further that the adopted standards specify for what purposes unique health identifiers may be used.

II. Provisions of the Proposed Regulations

On June 16, 1998 (63 FR 32784), we proposed a national standard employer identifier and requirements concerning its implementation. That rule would have established requirements that health plans, health care clearinghouses, and health care providers would have to meet to comply with the requirements for use of a unique employer identifier in electronic transactions.

We proposed to add a new part to title 45 of the Code of Federal Regulations (63 FR 32784) for health plans, health care providers, and health care clearinghouses in general. The new part would have been part 142 of title 45 and would have been titled Administrative Requirements. Subpart F would have contained provisions specific to the employer identifier. In this final rule, we have codified these provisions in Part 162.

The proposed rule for the employer identifier (63 FR 32784) discussed applicability of HIPAA to all health plans, all health care clearinghouses, and those health care providers that transmit any health information in electronic form in connection with transactions referred to in section 1173(a)(1) of the Act.

The Transactions Rule (65 FR 50312) contains general requirements for administrative simplification, including applicability of the regulations, general effective dates, and definitions. We refer the reader to that rule for the discussion of comments and responses and for the actual regulations that were codified in the Code of Federal Regulations for the general requirements (45 CFR part 160 Subpart A, and 45 CFR part 162 Subparts A and I). In addition, some provisions in part 160 were further revised by the Privacy Rule published on December 28, 2000 (65 FR 82462).

A. Definitions

We proposed to define ''employer'' as 26 U.S.C. 3401(d) does: a person (or an entity) for whom an individual performs or performed any service, of any nature, as the employee of that person (or that entity) except for the following:

(1) If the entity for whom the individual performs or performed the services does not have control of the payment of the wages for the services, the term ''employer'' means the entity having control of the payment of the wages.

(2) If the entity pays wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term ''employer'' means that entity.

We did not receive any comments on our definition of ''employer.'' We note here that our proposed definition incorrectly omitted a reference to 26 U.S.C. 3401(a) of the Internal Revenue Code that is part of the definition at 26 U.S.C. 3401(d) of the Internal Revenue Code. We clarify in this rule that our definition of ''employer'' is as it appears in 26 U.S.C. 3401(d). We also note that the use of the term ''individual'' in the definition at 26 U.S.C. 3401(d) is not the same as in the final Privacy Rule. In the Privacy Rule, the word ''individual'' means a person who is the subject of protected health information. In the definition of employer, the word ''individual'' means a person who is an employee.

The EIN is defined in 26 CFR 301.7701–12. We proposed to define ''Employer identification number'' (EIN) as 26 CFR 301.7701–12 does: ''the taxpayer identifying number of an individual or other person (whether or not an employer) which is assigned pursuant to 26 U.S.C. 6011(b) or corresponding provisions of prior law, or pursuant to 26 U.S.C. 6109, and in which nine digits are separated by a hyphen, as follows: 00–0000000.''

In this final rule, we deleted the formatting description from our definition of EIN. We continue to define EIN as the employer identification number, as assigned by the IRS.

Deletion of the formatting description from our regulatory definition gives us flexibility, in case the IRS should decide in the future to change the format of the EIN.

B. Employer Identifier Standard

We proposed that § 142.602, National employer identifier standard, would describe the employer identifier standard. There currently exists no standard for employer identification that has been developed, adopted, or modified by a standard setting organization after consultation with the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA). Therefore, we would designate a new standard.

We proposed as the standard the employer identification number (EIN), which is assigned by the Internal Revenue Service (IRS), Department of the Treasury. As stated in II. Provisions of the Proposed Regulations, *A. Definitions,* we define EIN as the employer identification number assigned by the IRS, and we delete the formatting description in our definition.

Proposed § 142.602 has become § 162.605.

C. Requirements

In the proposed rule (63 FR 32787), we noted that the Act does not bind employers to use the standard. However, covered health care providers, health plans, and health care clearinghouses are bound to use the standard, where required, in electronic health transactions.

1. Health plans.

In § 142.604, Requirements: Health plans, we proposed to require health plans to accept the EIN on all standard transactions and transmit the EIN on all standard transactions that require an employer identifier to identify a person or entity as an employer.

2. Health care clearinghouses.

We proposed to require in § 142.606, Requirements: Health care clearinghouses, that each health care clearinghouse use the EIN on all standard transactions that require an employer identifier to identify a person or entity as an employer.

3. Health care providers.

In § 142.608, Requirements: Health care providers, we proposed to require each health care provider to use the EIN, wherever required, on all standard transactions that require an employer identifier to identify a person or entity as an employer.

4. Employers.

In § 142.610, Requirements: Employers, we proposed to require each employer to disclose its EIN, when requested, to any entity that conducts standard electronic transactions that require that employer's identifier to identify a person or entity as an employer.

Proposed §§ 142.604, 142.606, and 142.608 have been consolidated into § 162.610, and proposed § 142.610 has been removed in this final rule.

D. Effective Dates and Compliance Dates of the Employer Identifier

We proposed that health plans would be required to comply with our requirements as follows:

- Each health plan that is not a small health plan would have to comply with the requirements of § 142.604, now consolidated into § 162.610, no later than 24 months after the effective date of the final rule. (Note, proposed § 142.104, General requirements for health plans, is addressed in the final Transactions Rule (65 FR 50369).)
- Each small health plan would have to comply with the requirements of § 142.604, now consolidated into § 162.610, no later than 36 months after the effective date of the final rule. (Note, proposed § 142.104, General requirements for health plans, is addressed in the final Transactions Rule (65 FR 50369).)
- If the Secretary adopts a modification to a standard or implementation specification, the implementation date of the modification would be no earlier than the 180th day following the adoption of the modification. The Secretary would determine the actual date, taking into account the time needed to comply due to the nature and extent of the modification. The Secretary would be able to extend the time for compliance for small health plans.
- We proposed that health care clearinghouses and health care providers must begin using the standard specified in § 142.602, now § 162.605, no later than 24 months after the effective date of the final rule.

III. Comments and Responses Concerning the Proposed Provisions

All general comments on applicability of the HIPAA standards were addressed in the Transactions Rule. These comments will not be repeated here.

There were 61 commenters on the proposed rule. These commenters included Federal and State government agencies, private organizations (including health plans and health care provider professional organizations), and individuals.

A. Employer Identifier Standard

Comment: Two commenters said there should be no regulation as to the use or non-use of the hyphen as part of the format for the EIN. Eight commenters stated the hyphen should be omitted when transmitting standard transactions. One commenter said it should be omitted on standard transactions but used in human-readable formats. One commenter stated that the use of a modifier would be beneficial for identifying specific State agencies under a single EIN; another commenter recommended that the EIN not be used with a modifier. A few commenters recommended a check digit be used with the EIN; a larger number of commenters recommended a check digit not be used.

Response: The hyphen is part of the EIN, as it is defined at 26 CFR 301.7701–12 and assigned by the IRS. The standard transaction formats use alphanumeric fields for the EIN. These fields can accommodate the EIN with or without the hyphen. The implementation guides for the standard transactions are silent on whether the hyphen must be transmitted. Most translator software can easily add the hyphen to or remove it from the EIN field within standard transactions. In spite of the flexibility of the standard transaction formats and the capability of translators to handle EINs with and without the hyphen, we believe that we should require standardization of the identifier format within the standard transactions, in order to promote simplification and savings. We further believe that it would be confusing to adopt the EIN as the standard unique employer identifier, but then to direct that the adopted standard be modified, by removing the hyphen, before use in standard transactions. It would be equally confusing to adopt ''the EIN minus the hyphen'' as the standard, because this identifier would still be referred to informally as the EIN, and it would not be clear when the hyphen is needed and when it is not. We believe it is advantageous to adopt the EIN exactly as assigned by the IRS. This strategy is clearer and more flexible, should the IRS, at some time in the future, modify its defined format of the EIN for any reason. We therefore require that the EIN as assigned by the IRS be used in the standard transactions, which means at present that the hyphen must be transmitted as part of the EIN.

The EIN was selected as a cost-effective choice for the standard employer identifier because the IRS is already issuing it and employers already have this identifier. The IRS has no

project initiated at this time to modify the format of the EIN or to add a check digit to the EIN.

The presence of a check digit can help in detection of keying errors made in data entry of a number. We could have specified a check digit to be used with the IRS-issued EIN. However, we believe that in many cases where the EIN is used in standard transactions, it will be on file electronically and will not need to be inserted through data entry. Therefore, the benefits of a check digit would be modest.

Modification of the IRS-issued identifier by addition of modifiers or a check digit for use in health care transactions would require costly additional processes and would negate the benefits of using the existing IRS infrastructure; therefore, we do not add modifiers or a check digit to the IRS format.

Comment: Several commenters thought that the EIN was proposed to identify health care providers. Some stated that the EIN was not specific enough to uniquely identify health care providers. Others expressed privacy concerns if the EIN were used to identify health care providers.

Response: The same entity may have multiple roles in health care transactions. On May 7, 1998, we proposed that the National Provider Identifier, not the EIN, be adopted to uniquely identify health care providers (63 FR 25320). The EIN will be used to identify an entity in the employer role. For example, a hospital may be both an employer and a health care provider. The hospital would use its EIN to identify itself when conducting transactions in an employer role, for example, making premium payments on behalf of its employees. When making claims for health care services furnished, it would use its National Provider Identifier.

Comment: Several commenters thought that the EIN was proposed to identify the patient's health plan or insurance coverage. One commenter stated one identifier should be used for both payer and employer. One commenter stated it would be confusing to use a different identifier for employee welfare benefit plans and employers, since such plans are sponsored by employers.

Response: The EIN will be used to identify an entity acting in the employer role in standard transactions. It will not identify the patient's health plan or insurance coverage. It will not replace the group number, account number, policy number, or subscriber number. Although it is true that the employee welfare benefit plans are often sponsored by employers, the EIN will be used to identify only the employer, not the health plan. In a future proposed rule, HHS intends to propose a health plan identifier to identify health plans. Employee welfare benefit plans would be identified by a health plan identifier.

Comment: Several commenters supported the choice of the EIN. Two commenters stated the EIN did not meet the 10 criteria established for selection of a standard under the Act.

Response: Of the two commenters stating that the EIN did not meet the criteria (see 65 FR 50351–50352 for the list of criteria), one commenter was not specific about how the EIN did not meet the criteria. The second commenter incorrectly believed that the EIN was being proposed to identify the insurance coverage of a patient rather than to identify an employer in standard transactions.

B. Requirements

Comment: One commenter stated that we should clarify the meaning of the terms ''required'' and ''situational.'' Many commenters stated that the usage of the EIN of the employer in health care transactions was unclear and requested clarification, i.e., whether the EIN was required, situational, etc. One commenter said the EIN of the employer should be a situational data element on all electronic data interchange (EDI) transactions. Several commenters stated that the EIN should be required only on transactions exchanged between an employer and a health plan. Several commenters said they needed clarification on which transactions would use the EIN.

Response: As used with respect to a data element in a standard transaction, the word ''required'' means that the data element is required according to the standard implementation guide for that transaction. The word ''situational'' means that the data element or choice of a specific code value is required if the data condition described in the standard implementation guide occurs. For purposes of this rule, if use of the employer identifier is situational and the data condition occurs, the EIN is considered to be required.

The X12N Version 4010 transaction implementation guides are the authority for specific information on the use of the EIN to identify the employer in X12N transactions. The following summarizes use of the EIN to identify the employer in X12N transactions:

- X12N 270/271 Eligibility for a Health Plan—Situational (Used to identify the employer as the source of eligibility information when the employer maintains that information.) (Note: Although the implementation guide does support the use by employers, and the information receiver can be identified specifically as an employer, employer participation in this transaction is not a HIPAA business purpose.)
- X12N 276/277 Health Care Claims Status—Situational (Used to identify the employer in worker's compensation claims. This usage covers situations where the employer is considered the subscriber for a patient when the claim is a result of a work-related injury or illness. In this circumstance, the health care provider and health plan are using the standard named in the final Transactions Rule although this is not required by the Final Rule because one or both are not covered entities or this is a business purpose not covered under the final Transactions Rule. In most cases, the health care provider will already know the EIN because it will have a relationship with the employer for worker's compensation cases or because provision of the EIN is required by local, State, or other regulation.)
- X12N 820 Health Plan Premium Payments—Situational (Used to identify an entity who is an employer as the remitter of the premium or as the entity to which the premium payment applies.)
- X12N 834 Enrollment and Disenrollment in a Health Plan—Required (when used to identify the sponsor of the health plan when the sponsor is an employer.) Situational (when used to identify the employer of a person covered under a health plan when that employer is not the sponsor. The non-sponsor employer is identified only when the contract between the sponsor and the health plan requires that the sponsor report this information.)

An employer identifier is not used to identify an entity as an employer in the following X12N standard transactions:

- X12N 278 Referral Certification and Authorization
- X12N 835 Health Care Payment and Remittance Advice
- X12N 837 Health Care Claims or Equivalent Encounter Information—Dental
- X12N 837 Health Care Claims or Equivalent Encounter Information—Professional
- X12N 837 Health Care Claims or Equivalent Encounter Information—Institutional

The EIN of the employer is optional in the NCPDP retail pharmacy transactions. The implementation guides for the NCPDP transaction standards are the authorities for specific information on the use of the EIN of the

employer in the NCPDP standard transactions.

Comment: Many commenters expressed concern that health care providers would be required to report the EIN of the patient's or subscriber's employer on standard transactions. They requested more specific data related to the costs to health care providers of reporting these EINs. They noted that health care providers do not routinely obtain and patients do not generally know these EINs. Some commenters noted that, with the exception of the X12N 834 enrollment transaction, the X12N implementation guides specify the employer identifier is situational in all occurrences. Health care providers are not a party to the X12N 834 and thus would not be required to report a patient's employer's EIN. Many commenters therefore recommended that all references to the use of employer identifiers by health care providers be deleted from the regulation. One commenter noted that third party administrators sometimes require health care providers to report the employer on eligibility transactions, and that subcontracting health care providers in Provider Sponsored Organizations sometimes direct eligibility transactions to the employer. Some commenters stated that if health care providers were required to report or use the EIN of the patient's employer, health insurance cards should carry this EIN; otherwise, health cards should not carry the EIN.

Response: Health care providers do not conduct the X12N 834 enrollment transaction, the only standard transaction where the employer identifier is required. In all standard transactions that a health care provider might conduct, the employer identifier is either not a permitted value or is one of a choice of alternate values. In the situations where the employer identifier may be used in a standard transaction used by covered entities under HIPAA, the employer identifier is used only if the party being identified is an employer and its identifier has been given to the health care provider as the electronic transaction identifier for the employer as an information source in an eligibility transaction. The standard transaction for eligibility inquiry and response does not contain data elements for identifying the subscriber's employer. We expect that health care providers will be able to obtain the EIN from the employer, as is the current practice, for the limited cases when an EIN is needed in covered standard transactions initiated by the health care provider.

Comment: Some commenters stated that employers may not want to disclose their EINs and requested that the final rule explicitly state the penalties for an employer that does not disclose its EIN. Some were concerned that the EIN may not be accessible to parties needing the EIN for health care transactions. One commenter said that because of administrative costs, employers will not want to provide their EINs. Another commenter stated that employers would be so overwhelmed by requests for their EINs that they would place them on everything to limit staff time required for answering these requests.

Response: These concerns were generated because commenters incorrectly thought that EINs would be required in transactions initiated by health care providers or others who would not know the EIN. Although identification of the subscriber's employer was part of the data content of the institutional health care claim transaction in the proposed Transactions Rule, that data element was removed from the institutional health care claim transaction that was adopted by the final Transactions Rule. In fact, the EIN will be used, for the most part, in transactions initiated by the employer itself. The EIN is required for the enrollment in a health plan standard transaction, which is usually initiated by employers (which are not covered entities). In other transactions, such as the eligibility for a health plan transaction, the employer identifier only occurs in conjunction with the use of the standard transaction between one or more organizations who are noncovered entities under HIPAA, or as one of the possible choices of identifiers for the employer. In the eligibility for a health plan transaction, the employer identifier can be used as one of the permitted identifiers for the employer as the source or receiver of eligibility information. Thus, when a health care provider is initiating the eligibility for a health plan transaction to an employer, in the process of determining the proper electronic routing identifiers and other electronic identifiers, the health care provider has the opportunity to obtain an EIN if required by the employer as its electronic routing or other electronic identifier. We believe that use of the EIN will not generally create compliance problems for covered entities.

We had proposed to require each employer to disclose its EIN, upon request, to any covered entity that needed to use that employer's EIN in a standard transaction. This requirement is not adopted in this final rule because employers are not covered entities under the Administrative Simplification provisions of HIPAA. However, we believe that employers will have a strong incentive to continue the common business practice of providing their EINs voluntarily in those rare cases where it is not already known in order to maintain or improve the efficiency of administrative processes.

Comment: Many commenters thought that the EIN of the patient's employer or of the patient would be required in health care claim and encounter transactions. These commenters stated that use of the EIN in these transactions is an invasion of privacy, both personal and medical. Several commenters stated that implementation of a national standard employer identifier will permit unwarranted Federal monitoring of patient care and linking of medical records through employers. They stated that the possibility of Federal monitoring and linking of medical records will create barriers of distrust between doctors and patients and between employers and employees. They stated use of the EIN will eventually lead to a numbering system on citizens that will make it easier to track citizens from one employer to another, build citizen profiles, or discriminate against citizens based upon health status. One commenter thought that the use of the EIN would result in the collection of centralized medical records and had potential for abuse. Several commenters stated this regulation was an improper role of government. Several commenters said they would like to shelve the proposed rule, while others said there should be a nationally publicized hearing or that the use of the EIN should go to a public vote and not be decided by the government. Several commenters were concerned about the security of medical records stored in central computer locations. One commenter supported a ''Patients' Bill of Rights'' with enforcement through the court systems. One commenter requested clarification of penalties for patients who refuse to give the names or EINs of their employers. One commenter said that States should not be required to give employers access to benefit information. This commenter stated this would be unacceptable, based on confidentiality and administrative burden.

Response: Many commenters misunderstood the proposed application of the employer identifier. The inclusion of the employer identifier is optional in the NCPDP retail pharmacy claim. The employer identifier is not used at all to identify an entity as an employer in the X12N standard health care claim or equivalent encounter information transactions. It is used

primarily to identify employers that are sending or receiving transactions for enrollment in a health plan or payment of premiums. Those transactions do not carry information about the treatment of individuals. We do not believe the employer identifier will facilitate federal monitoring of patient care, collection of central medical records, or tracking of citizens. We do not believe it will lead to barriers of distrust between doctors and patients, or between employers and employees. HHS proposed standards for security of health information, including medical records, in a proposed rule (63 FR 43242) published on August 12, 1998. HHS also adopted standards for privacy of individually identifiable health information in the Privacy Rule (65 FR 82462) published December 28, 2000. We do not require patients to give the EIN of their employers to anyone or require States to give employers access to benefit information.

Comment: One commenter recommended the revision of §§ 142.604 and 142.608 as follows: ''Each health plan/health care provider must accept and transmit the national employer identifier of any employer that must be identified in any standard transaction.'' One commenter stated that § 142.606 should be deleted since clearinghouses do not collect, validate, or supply data elements to the transaction.

Response: We agree that §§ 142.604 and 142.608 should be revised for clarity. We do not agree that § 142.606 should be deleted because health care clearinghouses are covered entities and are required to use the standards, but we made a similar revision as that made to §§ 142.604 and 142.608. These revisions are reflected in § 162.610.

C. Implementation Concerns

Comment: One commenter recommended HHS notify employers of this proposal for national use of EINs.

Response: Employers are not covered entities, and this rule places no requirements upon them. In many cases, employers already use the EIN to identify themselves in standard transactions. Use of the EIN by employers in standard transactions will continue to be voluntary. While employers are not covered entities under this rule, health plans are free, as part of their business arrangements with employers, to require employers to use the standard transactions and to provide their EINs for this purpose. We have provided public notice of this proposal by publication of the proposed rule in the **Federal Register** on June 16, 1998 (63 FR 32784) and by publication of this final rule in the **Federal Register**.

Comment: Several commenters requested clarification of the employer enumeration process and how information in the employer identifier system would be maintained. They also stated that timely and accurate updates to this system are critical to accurate public health data collection efforts. One commenter wanted confirmation that the plans for authenticating prior to the IRS's issuance of an EIN would remain the same as today. It was suggested that one or more centers be established to answer questions about the employer identifier and redirect questions to the IRS or other Departments.

Response: The IRS maintains the EIN enumeration system and database, and makes information on the EIN available through its web site at *http://www.irs.ustreas.gov/.* The IRS authentication, enumeration and update processes and the IRS enumeration system will not be changed as a result of this regulation. The IRS answers questions about the EIN through its web site. HHS answers questions about the Administrative Simplification regulations through its web site at *http://aspe.hhs.gov/admnsimp.*

Comment: One commenter asked whether the EIN is always the same as the taxpayer identifying number.

Response: The taxpayer identifying number may be an EIN, a Social Security Number, or an IRS individual taxpayer identification number. The IRS, at 26 CFR 301.7701–12, defines the Employer Identification Number as ''the taxpayer identifying number of an individual or other person (whether or not an employer) which is assigned pursuant to section 6011(b) or corresponding provisions of prior law, or pursuant to section 6109, and in which nine digits are separated by a hyphen, as follows: 00–0000000.''

Comment: A commenter wanted to know the IRS policy on reusing an EIN.

Response: Currently, the IRS does not reuse EINs; that is, it does not assign a previously used EIN to a new applicant for an EIN. IRS Publication Number 1635, ''Understanding Your EIN, Employer Identification Numbers,'' includes information on business and corporate changes that would allow continued use of an organization's EIN or would require issuance of a new EIN. This publication can be ordered by calling (800) 829–3676 or can be downloaded from the IRS web site at *http://www.irs.ustreas.gov/plain/bus_info/pub1635.html.*

Comment: Several commenters recommended the use of an online EIN database and suggested an IRS directory be established. Several commenters recommended use of a standards-based directory schema. Another stated it would be necessary to have a directory only if transactions other than the X12N 834 Health Care Benefit Enrollment were to require use of the EIN. This commenter stated the X12N 834 transaction would not require a directory since it is initiated by employers.

Response: For the most part, the EIN will be used in HIPAA transactions initiated by the employer. The employer will know its own EIN; therefore, an on-line public directory will not be necessary. In the few cases where a standard transaction that requires an employer's identifier is initiated by an entity other than the employer, we expect that the entity will obtain the EIN from the employer, as is the current practice.

Comment: A concern was raised by one commenter about the length of time it would take to receive an EIN and how both Medicare and Medicaid claims would be paid if the employer did not have an EIN. One commenter said that the proposed rule makes electronic transmissions impossible for any employer that lacks an EIN or refuses to disclose its EIN. Two commenters suggested that the IRS determine those employers that do not already have EINs and that HHS require those named by the IRS to obtain EINs. Another commenter suggested that instructions be made available on what to do if an employer does not have an EIN. One commenter stated that employers utilizing Social Security Numbers for tax reporting purposes should be required to apply for EINs.

Response: Many of these concerns were based on an incorrect belief that the patient's employer's EIN would be required in standard claim transactions. Actually, the patient's employer's EIN is not included in the X12N standard claim transactions and is optional in the NCPDP retail pharmacy claim. We know of no situation where an employer identifier would be required in a standard transaction and the employer would not have an EIN. The employer identifier is used in standard transactions to identify the employer of employees who are subjects in the transaction. Any business that pays wages to one or more employees is required to have an EIN as its taxpayer identifying number. A sole proprietor who has no employees or who files no excise or pension tax return is the only business person who is not required to obtain an EIN; a sole proprietor with no employees would not need to be identified as an employer in standard transactions. The IRS publication,

''Understanding Your EIN, Employer Identification Numbers,'' Publication 1635, states that the IRS generally assigns an EIN within 4–5 weeks of receiving an application by mail or assigns an EIN immediately via the tele-TIN telephone process. For the telephone number in each state, see the ''Where to Apply'' section in Publication 1635. Publication 1635 can be downloaded from the IRS web site at *http://www.irs.ustreas.gov/plain/bus_info/pub1635.html* or can be ordered by calling (800) 829–3676.

Comment: One Medicaid State agency requested clarification on whether Medicaid State agencies would use the EIN when making health plan premium payments or when making capitation payments to managed care plans. Other commenters had concerns of how health plan sponsors that are not employers would be identified in standard transactions. One commenter requested that the description on how to obtain an EIN (63 FR 32793) be expanded to include those non-employer entities that will need an identifier for HIPAA transactions.

Response: HIPAA requires that the Secretary adopt a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system. If the Medicaid State agency is making premium payments or capitation payments as an employer on behalf of its own employees, it would use its EIN. The law does not provide for adoption of a standard identifier for health plan sponsors that are not employers but that may enroll or make premium payments on behalf of other persons. We recognize that in some situations, the EIN is used to identify health plan sponsors that are not employers. This practice will not be affected by this final rule.

Comment: One commenter asked how foreign employers would be identified in standard transactions.

Response: Foreign employers are treated the same as all other employers under this rule. In this rule, we have intentionally adopted a definition of ''employer'' that is identical to the definition used by the Internal Revenue Service in 26 U.S.C. 3401(d). This definition covers foreign employers who pay wages to employees for whom tax withholding is required by the IRS. For purposes of this rule, it is important that any employer that enrolls or disenrolls employees in a health plan or that makes premium payments on behalf of employees to a health plan be able to be identified by the standard employer identifier. Since any business that pays wages to one or more employees is required to obtain an EIN as its taxpayer identifying number, we know of no employer that would not be able to be identified by an EIN when enrolling or disenrolling employees in a health plan or making premium payments on behalf of employees to a health plan.

Comment: In the proposed rule (63 FR 32793) we noted that some employer organizations have more than one EIN. We asked for comment on whether one EIN should be used consistently in health care transactions. One commenter noted that in some cases employer organizations with multiple EINs may be doing business with multiple health plans and using a different EIN with each plan, resulting in coordination of benefits problems. Several commenters recommended that specific guidelines be defined for using a single EIN across the board in health-related transactions. Several commenters stated that the use of multiple EINs would not be a problem. Several commenters made suggestions on which EIN should be designated for use in health care transactions, for example, the one that appears on the IRS Form W–2, Wage and Tax Statement, of the employee that is a subject of the transaction, the one that identifies the employee's employment address, or the one with the lowest numeric value. Some commenters noted that the intended purpose of the employer identifier is to identify the employer and that the employer should decide which EIN to use. Several commenters suggested that an IRS publication include information on IRS protocols for multiple EINs. Two commenters requested information about the IRS maintenance of EINs when corporate changes such as mergers occur.

Response: When a business entity is a consolidated group consisting of several corporations, each corporation may be separately identified for certain Federal tax reporting purposes, and may have its own EIN. The consolidated group may also have an EIN, under which it files a consolidated income tax return. For any relationship of an employer to an employee of that employer, only one unique EIN designates the employer. The standard unique employer identifier of an employer of a particular employee is the EIN that appears on that employee's IRS Form W–2, Wage and Tax Statement, from the employer.

The IRS regulations at 26 CFR 301.7701 contain definitions of entities that may be identified for Federal tax purposes. The instructions accompanying IRS Form SS–4, ''Application for Employer Identification Number,'' detail the kinds of entities that must have EINs and the situations that require an entity to obtain a new EIN. IRS publication 1635, ''Understanding Your EIN, Employer Identification Numbers,'' gives further information on business or corporate changes that do and do not require an entity to obtain a new EIN. IRS publications can be downloaded from the IRS web site at *http://www.irs.ustreas.gov/plain/forms_pubs/index.html* or ordered by calling (800) 829–3676.

Comment: One commenter was concerned about possibly conflicting Federal and State regulations for use of the EIN.

Response: This commenter did not note any particular conflicts in use of the EIN and we are not aware of any conflicts. Section 1178 of the Act discusses the effect of the Administrative Simplification provisions on State law. The general rule is that the standards adopted under the Act supersede any contrary provision of State law. For a more detailed discussion of the statutory preemption provisions and the regulatory implementation of those provisions, see 65 FR 82480 through 82481 and 65 FR 82579 through 82588.

D. Approved Uses

Comment: One commenter stated that the regulations should not require the EIN on ''past'' health information. Another commenter expressed concern over the lack of guidelines and controls in dissemination and use of EINs for health care purposes. These commenters said that the regulation should clearly define the approved uses and cross-refer to penalties for misuse.

Response: This regulation does not require use of the EIN in transactions conducted before the compliance date. HHS intends to publish a proposed rule concerning enforcement of the HIPAA standards. Civil penalties for failure to comply with requirements and standards are covered in Section 1176 of the Act. Criminal penalties for misuse of an employer identifier are covered in Section 1177 of the Act.

Comment: One commenter questioned if the EIN would replace the United Business Identifier used in non-health transactions. Another asked if the EIN would replace other employer identifiers, or be used in addition to them.

Response: This rule does not address non-health care transactions. We cannot speak to the issue of what will happen in such transactions. The EIN is the only employer identifier in standard transactions.

Comment: Some commenters were concerned that employers would not want to use their EINs because of privacy issues. One commenter stated that effective security and confidentiality measures should protect the EIN. Three commenters stated that health data organizations and public policy researchers should have access to the EIN for public health surveillance. They wanted this access to be clarified.

Response: The confidentiality of the EIN is protected under the Internal Revenue Code. Section 26 U.S.C. § 6103 provides that, generally, taxpayer return information, including taxpayer identity (which includes a taxpayer identifying number), must be kept confidential and may not be disclosed by, among others, federal officers or employees, except as permitted by Title 26.

In this rule we make no changes to the existing access that health data organizations and public policy researchers have to the EIN. Health data organizations and researchers desiring access to data from a Federal system of records that contains the EIN should address their requests to the Freedom of Information Act official in the agency responsible for the system.

E. The Specific Impact of the Employer Identifier

Comment: One commenter stated that the cost to implement the EIN would add to premiums paid by individuals and their families. Several commenters said the expense and resources to implement this identifier are greater than estimated. One commenter stated that more specific data related to the exact costs to health care providers should be made available for public comment prior to publication of the final rule.

Response: Those concerned with the cost of the identifier consisted primarily of commenters that incorrectly thought that health care providers would be required to use the EIN on health care claims. As noted in our previous responses, the EIN will be used primarily by employers on transactions they initiate; therefore, we do not expect the costs to be higher than those estimated in the proposed rule. When the employer identifier is used in standard transactions initiated by entities other than the employer, we expect that these entities will obtain the EIN from the employer, as is the current practice.

IV. Provisions of Final Rule

We are implementing the employer identifier standard, which we now refer to as the standard unique employer identifier, as we proposed in the proposed rule, incorporating minor revisions. Any revisions are noted in Section VI (Summary of Changes to the Proposed Rule).

V. Implementation of the Standard Unique Employer Identifier

A. Obtaining an EIN

The Internal Revenue Service (IRS) maintains the process for assigning EINs. A business can obtain an EIN by submitting, to the Internal Revenue Service, Internal Revenue Service Form SS–4, Application for Employer Identification Number. Any business that is required to furnish a taxpayer identification number (generally one that pays wages to one or more employees) must use an EIN as its taxpayer identifying number. (26 CFR 301.6109–1(a)(1)(ii)(C)). A sole proprietor who has no employees or who files no excise or pension tax returns is the only business person who does not need to have an EIN as the taxpayer identifying number. We know of no situations where an employer having employees would not be able to obtain an EIN. The EIN is currently the employer identifier in most widespread use in the enrollment and disenrollment in a health plan, the eligibility for a health plan, and the health plan premium payment transactions. Employers are not required by the Act to use the EIN or conduct standard transactions. However, we believe that many employers will find that it will be to their advantage to do so.

B. Approved Uses

The IRS, in a letter to us dated January 16, 1998, stated that ''the use of the EIN as a unique identifying number in all health care transactions would not present a problem for the (Internal Revenue) Service in any way.'' The IRS further expressed the ''hope that the use of the EIN in this capacity will bring about the consistency and accuracy that are required for these types of transactions.'' Two years after adoption of this standard (3 years for small health plans) covered entities must use the EIN as the employer identifier in the health-related financial and administrative transactions for which standards have been adopted by the Secretary under 45 CFR Subchapter C that require an employer identifier. We note that employers that are not health plans, health care clearinghouses, or health care providers are not bound by the Act, and use of the EIN by employers to identify themselves in the employer role is voluntary.

Examples of approved uses in standard health care transactions are the following:

- Employers could use their EINs to identify themselves in transactions making health plan premium payments to health plans on behalf of their employees.
- Employers could use the EIN to identify themselves or other employers as the source or receiver of information about eligibility.
- Employers could use their EINs to identify themselves in transactions to enroll or disenroll their employees in a health plan.

VI. Summary of Changes to the Proposed Rule

We changed the title of this regulation from National Standard Employer Identifier to Standard Unique Employer Identifier to accurately reflect the requirement under the Act for the Secretary to adopt a standard unique health identifier for each employer for use in the health care system.

We deleted the formatting description from the definition of EIN. We continue to define EIN as the employer identification number as assigned by the IRS.

We clarified that our definition of employer is as it appears in 26 U.S.C. 3401(d).

We removed the requirement for each employer to disclose its EIN, upon request, to covered entities that need to use that employer's EIN in standard transactions.

We consolidated the requirements for health care providers, health plans, and health care clearinghouses in § 162.610.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment on a collection of information requirement submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency.
- The accuracy of the agency's estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the

affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following section of this document that contains information collection requirements.

Subpart F—Standard Unique Employer Identifier

§ 162.610 Requirements for covered entities

Discussion

While this standard would replace the use of multiple identifiers, resulting in a reduction of burden, the requirement to use and disclose information using this standard meets the definition of an agency-sponsored third-party disclosure under the Paperwork Reduction Act of 1995 (PRA). However, the burden associated with the routine or ongoing use of this requirement is excluded under the definition of ''burden'' at 5 CFR 1320.3(b)(2). Health care clearinghouses do not normally obtain or use the EIN except to reformat it as part of translating one transaction format to another. Adoption of the EIN does not require any changes to the way health care clearinghouses process employer identifiers. Thus, the cost of this regulation for health care clearinghouses is negligible.

As explained earlier in this document in section III. Comments and Responses Concerning the Proposed Provisions, health care providers do not conduct the only standard transaction in which the employer identifier is a required data element. In standard transactions that include the employer identifier and which may be conducted by a health care provider, the employer identifier use is situational. In such transactions, if the employer identifier is not known by the health care provider, the health care provider does not have to furnish it. The cost of this regulation for health care providers, therefore, is negligible.

The remaining burden associated with this requirement, which is subject to the PRA, is the initial one-time burden on health plans and covered health care providers to modify their current computer systems.

In most cases where a health plan would need to use an employer identifier, the health plan would have received the identifier on an incoming transaction from the employer. We estimate the one-time burden over a 3-year period on the estimated 2.55 million health plans to modify their current computer systems software would be 2 hours/$60 per entity, for a total burden of 5.1 million hours/$153 million. The maximum annual burden would be 5.1 million hours divided by 3, or 1.7 million hours, and $153 million divided by 3, or $51 million. These figures are based on the assumption that this and the other burden calculations associated with HIPAA, Title II systems modifications, may overlap. This average also takes into consideration that: (1) this standard may already be in use by several of the estimated entities; (2) modifications may be performed in an aggregate manner during the course of routine business and/or; (3) modifications may be made by contractors such as practice management vendors, in a single effort for a multitude of affected entities.

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; ATTN: CMS 0047–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer

VIII. Final Impact Analysis of the Employer Identifier

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate the total maximum annual costs for all health plans to modify their computer systems software to implement the employer identifier standard to be $51 million per year, for 3 years. Therefore, we do not believe that this rule is a major rule under Executive Order 12866 or 5 U.S.C. 804(2).

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

We note that the costs and savings for the administrative simplification standards were presented in the final Transactions Rule (65 FR 50350). Due to a lack of data that would permit an analysis of each individual standard, the Department chose to analyze the impact of all of the standards in total, with the exception of the privacy standards. As the effect of any one standard is affected by the implementation of other standards, it can be misleading to discuss the impact of one standard by itself. Therefore, we have done an impact analysis on the total effect of all the standards in the final Transactions Rule (65 FR 50350). This employer identifier rule is expected to represent a minor portion of the costs or savings expected from the administrative simplification standards, because of the voluntary nature of the use of this identifier by employers and the limited use of an employer identifier in standard transactions conducted by covered entities.

A. Unfunded Mandates

This final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.) and Executive Order 12866. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As discussed in the combined impact analysis published at 65 FR 50350, HHS estimates that implementation of the administrative simplification standards overall will require the expenditure of more than $110 million by the private sector. However, we do not believe the implementation of the employer identifier standard to be a significant regulatory action under UMRA.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980, Pub. L. 96–354, requires us to prepare a regulatory flexibility analysis

if the Secretary certifies that a regulation would have a significant economic impact on a substantial number of small entities. On November 17, 2000, the Small Business Administration (SBA) published a final rule (65 FR 69432) changing the small business size standards for the health care industry. This SBA final rule became effective December 18, 2000. The size standards that the SBA now uses are those defined by the North American Industry Classification System. Prior to that, the SBA used size standards as defined by the Standard Industrial Codes. The size standard is no longer a uniform $5 million in annual revenues for all components in the health care sector. Rather, the size standard now ranges from $6 million to $29 million. The regulatory flexibility analysis for the employer identifier is linked to the aggregate regulatory flexibility analysis for all the administrative simplification standards that appeared in the final Transactions Rule published on August 17, 2000, which predated the SBA change. It is appropriate, for the purposes of this rule, to continue to use the $5 million small business size standard that was in effect at the time of publication of the final Transactions Rule. Nonprofit organizations are considered small entities. Small government jurisdictions with a population of less than 50,000 people are also considered small entities. Individuals and States are not considered small entities.

We do not believe that this regulation will have a significant economic impact on a substantial number of small entities. The EIN is already one of the identifiers most frequently used to identify the employer in electronic health care transactions. Most clearinghouses, including small clearinghouses, already have the ability to accept and transmit the EIN when an employer identifier is required. Many health plans and health care providers already use the EIN to identify the employer in any transactions that require an employer identifier. Their current practice is to obtain the EIN from the employer, if they are the initiator of the transaction and they do not already know the EIN. We believe these entities will incur few conversion costs as a result of this regulation. There are few situations when an employer identifier is required in standard transactions initiated by health plans and no such situations for those initiated by health care providers. Converting from other employer identifiers to the EIN primarily involves the database administration task of substituting one record identifier for another in a limited number of records, which is not a costly activity. Therefore, we believe this regulation will not impose a significant economic impact on small health plans or small health care providers that convert their systems to use the EIN to identify the employer in those few situations. As stated in the Collection of Information Requirements section in this rule, we estimate the total maximum annual costs for all health plans to modify their computer systems software to be $51 million per year, for 3 years. Employers are not bound by the Act to use the standards; therefore, any use of the EIN by employers will be voluntary. Most of the use of the employer identifier in transactions will be voluntary use by employers in transactions they initiate. Therefore, we believe this regulation will not impose a significant economic impact on small employers.

C. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

This portion of the impact analysis relates specifically to the standard that is the subject of this regulation—the employer identifier. This section describes specific impacts that relate to the employer identifier. As we indicated in the introduction to this impact analysis, however, we do not associate the specific costs and savings to the specific standards.

1. Affected Entities

a. Health Care Providers

In all standard transactions conducted by the health care provider, the employer identifier is not used or is situational. The employer identifier is used only if the data condition described in the implementation guide occurs. In the instances when an EIN could be used by a health care provider, the EIN is situationally required only if the entity being identified is an employer and the identifier is known to the health care provider. We expect health care providers will obtain the EIN from the employer in these limited cases. However, if the health care provider cannot obtain the EIN, then the data condition has not been met and its use is not required. There are no situations in which an employer identifier is required in a standard transaction initiated by a health care provider. Any negative impact on health care providers generally will be related to the initial implementation period for health care providers that currently use an identifier other than the EIN to identify the employer in electronic health transactions. Those health care providers will incur implementation costs for converting systems from use of other employer identifiers to use of the EIN. Some health care providers will incur those costs directly and others will incur them in the form of fee increases from billing agents and health care clearinghouses.

b. Health Plans

Health plans that engage in electronic commerce will have to modify their systems to use the EIN if they do not currently use the EIN to identify the employer in standard electronic health transactions that require an employer identifier. In most cases, health plans currently obtain and use the EIN of the employer in those standard transactions that require an employer identifier. Health plans currently using an employer identifier other than the EIN will have a one-time cost impact. We estimate the total maximum cost for all health plans to be $51 million per year, over 3 years, to make these systems modifications.

c. Health Care Clearinghouses

Health care clearinghouses will have to modify their systems to use the EIN if they do not currently use the EIN to identify the employer in standard electronic health transactions that require an employer identifier. In most cases, health care clearinghouses currently use the EIN of the employer in those standard transactions that require an employer identifier. Health care clearinghouses currently using an employer identifier other than the EIN will have a one-time cost impact.

2. Effects of Various Options

a. Guiding Principles for Standard Selection

The implementation teams charged with designating standards under the statute have defined, with significant input from the health care industry, a set of common criteria for evaluating potential standards (see 65 FR 50351–50352). These criteria are based on direct specifications in HIPAA, the purpose of the law, and principles that support the regulatory philosophy set forth in Executive Order 12866 of September 30, 1993, and the Paperwork Reduction Act of 1995.

We assessed the various options for an employer identifier against those criteria with the overall goal of achieving the maximum benefit for the least cost. We found that the EIN met all the criteria. No other alternative employer identifier is in widespread

use. No other alternative met a majority of the criteria, especially those supporting the regulatory goal of cost-effectiveness. We assessed the costs and benefits of the EIN, but we did not assess the costs and benefits of other identifier options, because they did not meet the criteria.

b. Need To Convert

All covered health care providers, health plans, and health care clearinghouses that do not currently use the EIN to identify the employer in electronic health transactions that require an employer identifier would have to convert. Because the EIN is currently in widespread use as an employer identifier throughout the industry, adopting the EIN would not require conversion for most health care providers, health plans or health care clearinghouses. The selection of the EIN imposes a far smaller burden on the industry than any nonselected option and presents significant advantages in terms of cost-effectiveness, universality, and flexibility.

c. Complexity of Conversion

The first two digits of the EIN reflect the issuing Internal Revenue district. However, the EIN does not rely significantly on embedded intelligence (coded information that is part of the identifier) to identify the specific employer. For those health care providers, health plans, and health care clearinghouses that must convert to use the EIN, the complexity of the conversion would be significantly affected by the degree to which their processing systems currently rely on employer identifiers that contain embedded intelligence. Converting from one identifier that contains no embedded intelligence to another is less complex than modifying software logic to obtain needed information from other data elements. However, the use of an identifier that does not contain embedded intelligence meets the guiding principle of assuring flexibility.

In general, the shorter the identifier, the easier it is to implement. It is more likely that a shorter identifier, such as the EIN, would fit into existing data formats.

The selection of the EIN does not impose a greater burden on the industry in terms of the complexity of conversion than the nonselected options.

Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255) requires us to ensure meaningful and timely input by State and local officials in the development of rules that have Federalism implications. Although the proposed rule (63 FR 32784) was published before the enactment of this Executive Order, the Department consulted with State and local officials as part of an outreach program early in the process of developing the proposed regulation. The Department received comments on the proposed rule from State agencies and from entities who conduct transactions with State agencies. Many of the comments referred to the costs incurred by State and local governments that will result from implementation of the HIPAA standards. We assume that government entities will have these costs offset by future savings, consistent with our projections for the private sector (see the combined impact analysis (65 FR 50350)). A Congressional Budget Office analysis made the following points: States are already in the forefront of administering the Medicaid program electronically, Medicaid State agencies can compensate (for these costs) by reducing other expenditures, and the Federal Government pays a portion of the cost of converting State Medicaid Management Information Systems.

Other comments regarding States expressed the need for clarification as to when State agencies were subject to the standards. Responses to comments from States and State organizations regarding the employer identifier standard are found elsewhere in this preamble.

In complying with the requirements of part C of title XI, the Secretary established interdepartmental implementation teams that consulted with appropriate State and Federal agencies and private organizations. These external groups consisted of the NCVHS' Subcommittee on Standards and Security, the Workgroup for Electronic Data Interchange (WEDI), the National Uniform Claim Committee (NUCC), the National Uniform Billing Committee (NUBC) and the American Dental Association (ADA). The teams also received comments on the proposed regulation from a variety of organizations, including State Medicaid agencies and other Federal agencies.

List of Subjects

45 CFR Part 160

Electronic transactions, Health, Health care, Health facilities, Health insurance, Health records, Medicaid, Medical research, Medicare, Reporting and recordkeeping requirements.

45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this final rule, 45 CFR subchapter C is amended to read as follows:

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

A. Part 160 is amended as follows:

1. The authority citation for part 160 continues to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. Section 160.103 is amended by republishing the introductory text and adding the definitions of ''EIN'' and ''Employer'' in alphabetical order to read as follows:

§ 160.103 Definitions.

Except as otherwise provided, the following definitions apply to this subchapter:

* * * * *

EIN stands for the employer identification number assigned by the Internal Revenue Service, U.S. Department of the Treasury. The EIN is the taxpayer identifying number of an individual or other entity (whether or not an employer) assigned under one of the following:

(1) 26 U.S.C. 6011(b), which is the portion of the Internal Revenue Code dealing with identifying the taxpayer in tax returns and statements, or corresponding provisions of prior law.

(2) 26 U.S.C. 6109, which is the portion of the Internal Revenue Code dealing with identifying numbers in tax returns, statements, and other required documents.

Employer is defined as it is in 26 U.S.C. 3401(d).

* * * * *

PART 162—ADMINISTRATIVE REQUIREMENTS

B. Part 162 is amended as follows:

1. The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d–1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

Subparts B Through E—[Reserved]

2. Subparts B through E are reserved.

3. A new subpart F, consisting of §§ 162.600, 162.605 and 162.610, is added to read as follows:

Subpart F—Standard Unique Employer Identifier

Sec.

162.600 Compliance dates of the implementation of the standard unique employer identifier.
162.605 Standard unique employer identifier.
162.610 Implementation specifications for covered entities.

Subpart F—Standard Unique Employer Identifier

§ 162.600 Compliance dates of the implementation of the standard unique employer identifier.

(a) *Health care providers.* Health care providers must comply with the requirements of this subpart no later than July 30, 2004.

(b) *Health plans.* A health plan must comply with the requirements of this subpart no later than one of the following dates:

(1) *Health plans other than small health plans*— July 30, 2004.

(2) *Small health plans*— August 1, 2005.

(c) *Health care clearinghouses.* Health care clearinghouses must comply with the requirements of this subpart no later than July 30, 2004.

§ 162.605 Standard unique employer identifier.

The Secretary adopts the EIN as the standard unique employer identifier provided for by 42 U.S.C. 1320d–2(b).

§ 162.610 Implementation specifications for covered entities.

(a) The standard unique employer identifier of an employer of a particular employee is the EIN that appears on that employee's IRS Form W–2, Wage and Tax Statement, from the employer.

(b) A covered entity must use the standard unique employer identifier (EIN) of the appropriate employer in standard transactions that require an employer identifier to identify a person or entity as an employer, including where situationally required.

Subparts G Through H—[Reserved]

4. Subparts G through H are reserved.

Dated: March 20, 2002.

Tommy G. Thompson

Secretary.

[FR Doc. 02–13616 Filed 5–24–02; 4:50 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 247, and 252

[DFARS Case 2000–D014]

Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that requirements for use of U.S.-flag vessels, in the transportation of supplies by sea, apply to contracts at or below the simplified acquisition threshold as well as those that exceed the simplified acquisition threshold.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, contains requirements for use of U.S.-flag vessels when transporting supplies by sea under a DoD contract. The clause requires a contractor to (1) submit any request for use of other than U.S.-flag vessels in writing to the contracting officer;

(2) provide a copy of the bill of lading to the contracting officer and the Maritime Administration after each shipment of supplies by sea; (3) provide with the final invoice a representation as to whether ocean transportation and U.S.-flag vessels were used in performance of the contract; and (4) include the clause in subcontracts for construction supplies, noncommercial items, and certain commercial items.

Prior to this rule, the DFARS exempted contracts and subcontracts at or below the simplified acquisition threshold from use of the clause at DFARS 252.247–7023. In accordance with 10 U.S.C. 2631, Supplies: Preference to United States Vessels, this rule eliminates the exemption. However, the rule prescribes an alternate version of the clause for contracts and subcontracts at or below the simplified acquisition threshold. The alternate version excludes the requirement for a contractor or subcontractor to provide a representation regarding ocean transportation with its final invoice.

DoD published a proposed rule at 66 FR 47153 on September 11, 2001. Five sources submitted comments on the proposed rule. A summary of the comments and the DoD response is provided below:

Comment: The rule is contrary to Section 4101 of the Federal Acquisition Streamlining Act of 1994 (FASA) (Public Law 103–355; 41 U.S.C. 429), which requires the Federal Acquisition Regulation (FAR) to include 10 U.S.C. 2631 in a list of laws that are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold unless the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interest of the Federal Government to exempt such contracts and subcontracts.

DoD Response: The list of laws referred to by the respondent applies to laws enacted after FASA. 10 U.S.C. 2631 has been in existence since 1904. There is no statutory authority to exempt 10 U.S.C. 2631 for contracts or subcontracts at or below the simplified acquisition threshold. In addition, the policy in this DFARS rule is consistent with the FAR rule published at 65 FR 24324 on April 25, 2000, which applies the preference for U.S.-flag vessels to contracts awarded using simplified acquisition procedures.

Comment: The rule is contrary to Section 4201(a) of FASA (41 U.S.C. 427(a)), which requires that the FAR provide special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold. Compliance with 10 U.S.C. 2631 for such purchases of property would impose unreasonable administrative burdens on affected contractors and subcontractors.

DoD Response: The rule is consistent with the provisions of 41 U.S.C. 427 in that it seeks to avoid overly burdensome reporting requirements for acquisitions at or below the simplified acquisition threshold. The rule does not require use of the provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, or the clause at DFARS 252.247–7024, Notification of Transportation of Supplies by Sea, in acquisitions at or below the simplified acquisition threshold. Additionally, the rule limits the requirements of the clause at DFARS 252.247–7023, Transportation of Supplies by Sea, in contracts and subcontracts at or below the simplified acquisition threshold by excluding from those contracts and subcontracts the requirement for a contractor or subcontractor to provide a representation regarding ocean transportation with its final invoice.

Comment: DFARS 247.573(a)(2) exempts solicitations valued at or below

the simplified acquisition threshold from the requirement for offerors to represent whether or not ocean transportation will be used in performance of the contract. This representation (252.247–7022) helps to ensure that an offeror is cognizant of requirements for use of U.S.-flag vessels and that the contracting officer is aware of requirements for ocean transportation. Elimination of this representation is likely to increase incidents of non-compliance with Cargo Preference laws and adversely impact the U.S.-flag merchant marine. In addition, the new Alternate III for the clause at 252.247–7023, Transportation of Supplies by Sea, eliminates the following requirements for contracts and subcontracts at or below the simplified acquisition threshold: (1) The requirement for a contractor to provide a representation regarding ocean transportation with its final invoice; (2) The requirement for the Government to reject and return an invoice that does not contain the required representation; and (3) The right of the Government to equitably adjust the contract for unauthorized use of non-U.S.-flag vessels. Elimination of these requirements diminishes the ability of the contracting officer to monitor and enforce compliance with Cargo Preference laws.

DoD Response: Due to the increased potential for use of ocean transportation in contracts exceeding the simplified acquisition threshold, the DFARS requires contractors to provide multiple representations and requires contracting officers to determine whether ocean transportation will be required during the solicitation phase of an acquisition. These actions ensure that the contracting officer has the information needed to perform the appropriate level of oversight for high dollar value acquisitions. Since only a very limited number of procurements at or below the simplified acquisition threshold will require ocean transportation, the type of representations required above the simplified acquisition threshold would create an unnecessary burden on the majority of contractors receiving contracts at or below the threshold. Therefore, DoD believes that the costs of enforcing these requirements in contracts with an anticipated value at or below the simplified acquisition threshold would far outweigh the benefits and would be contrary to the provisions of 41 U.S.C. 427. DoD believes that the rule is an appropriate balance between the need to enforce the Cargo Preference laws and the need to impose minimal burden on contractors and subcontractors (many small businesses) when the value of the contract or subcontract does not exceed the simplified acquisition threshold.

Comment: The rule removes DFARS 247.572–1(c), which (1) requires the contracting officer to ask each offeror if it will transport supplies by sea, (2) requires a contractor that did not anticipate transportation of supplies by sea when it submitted its offer to notify the Government if it later intends to use ocean transportation, and (3) requires the contractor to use U.S.-flag vessels in the transportation of supplies by sea and comply with other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea. Elimination of these requirements will decrease Government oversight and will allow offerors and contractors to circumvent the requirements of the Cargo Preference laws.

DoD Response: The DFARS still contains these requirements. The text at DFARS 247.572–1(c) was removed because it was redundant of the policy found at DFARS 247.571(a), 247.573(a), 252.247–7022, 252.247–7023, and 252.247–7024.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most entities that provide ocean transportation of freight are not small businesses, and the rule minimizes the information required from offerors and contractors for acquisitions valued at or below the simplified acquisition threshold.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies. This rule increases the number of contractors subject to the information collection requirements in paragraphs (d) and (e) of the clause at DFARS 252.247–7023. DoD estimates that this change will increase paperwork burden by approximately 240 hours. The Office of Management and Budget (OMB) has approved this information collection for use through July 31, 2004, under OMB Control Number 0704–0245.

List of Subjects in 48 CFR Parts 213, 247, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 213, 247, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 213, 247, and 252 continues to read as follows:

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.301 is amended in paragraph (2)(i)(E) by removing the word ''and'', and by adding paragraph (2)(i)(G) to read as follows:

213.301 Governmentwide commercial purchase card.

* * * * *

(2) * * *

(i) * * *

(G) Does not require transportation of supplies by sea; and

* * * * *

PART 247—TRANSPORTATION

247.572–1 [Amended]

3. Section 247.572–1 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

4. Section 247.573 is amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

247.573 Solicitation provision and contract clauses.

* * * * *

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

* * * * *

(4) Use the clause with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

5. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(MAY 2002)''; and

b. In paragraph (b), in the entry ''252.247–2023'', by removing ''(MAR 2000)'' the first time it appears and adding in its place ''(MAY 2002)''.

6. Section 252.247–7023 is amended by revising the clause date, paragraph (e) introductory text, paragraph (f) introductory text, and paragraph (h), and by adding Alternate III to read as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

Transportation of Supplies by Sea (May 2002)

* * * * *

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Maritime Administration, Office of Cargo Preference, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information:

* * * * *

(f) The Contractor shall provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

* * * * *

(h) In the award of subcontracts for the types of supplies described in paragraph (b)(2) of this clause, the Contractor shall flow down the requirements of this clause as follows:

(1) The Contractor shall insert the substance of this clause, including this paragraph (h), in subcontracts that exceed the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

(2) The Contractor shall insert the substance of paragraphs (a) through (e) of this clause, and this paragraph (h), in subcontracts that are at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation.

* * * * *

Alternate III (May 2002)

As prescribed in 247.573(b)(4), substitute the following paragraph (f) for paragraphs (f), (g), and (h) of the basic clause:

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in subcontracts that are for a type of supplies described in paragraph (b)(2) of this clause.

[FR Doc. 02–13359 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 226 and 252

[DFARS Case 2000–D024]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 8022 of the DoD Appropriations Act for Fiscal Year 2001. Section 8022 provides for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Angelina Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2000–D024.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements Section 8022 of the DoD Appropriations Act for Fiscal Year 2001 (Public Law 106–259). Section 8022 provides funding for incentive payments to DoD contractors, and subcontractors at any tier, that use Indian organizations and Indian-owned economic enterprises as subcontractors.

DoD published an interim rule at 66 FR 47110 on September 11, 2001. The rule revised DFARS 226.104 and added a new clause at DFARS 252.226–7001. The new clause is similar to the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, but contains the DoD requirement to provide for incentive payments to subcontractors at any tier.

Nineteen sources submitted comments in response to the interim rule. A summary of the comments and the DoD response is provided below:

Comment: The DFARS policy excludes contracts awarded using FAR Part 12 (commercial item) procedures from the Indian Incentive Program. This exclusion should be removed.

DoD Response: This exclusion was established under previous DFARS Case 99–D300, published at 65 FR 19858 on April 13, 2000. A change to this exclusion is outside the scope of the present case. However, the DoD Office of Small and Disadvantaged Business Utilization is continuing to study this issue.

Comment: The definition of ''Indian'' should be amended to include Native Hawaiians.

DoD Response: Do not concur. The statutory basis for the Indian Incentive Program is 25 U.S.C. Chapter 17 (Section 1544). The definition of ''Indian'' provided in 25 U.S.C. Chapter 17 (Section 1452) does not include Native Hawaiians.

Comment: Prime contractors should be required to sponsor subcontractor claims for incentive payments.

DoD Response: Do not concur. The statute authorizing the Indian Incentive Program (25 U.S.C. 1544) provides that a contractor or subcontractor *may* be allowed an additional amount of compensation for subcontracts awarded to Indian organizations or Indian-owned economic enterprises. There is no statutory authority for DoD to require a contractor to submit or sponsor claims for incentive payments for its subcontractors.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because DoD already was implementing the Indian Incentive Program through use of the clause at FAR 52.226–1, Indian Organizations and Indian-Owned Economic Enterprises. The FAR clause permits incentive payments to large and small contractors that use Indian organizations or enterprises as subcontractors. The new DFARS clause expands the incentive payments to subcontractors at any tier. While this expansion should benefit small businesses that award lower-tier subcontracts to Indian organizations or enterprises, the economic impact should not be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 226 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Parts 226 and 252, which was published at 66 FR 47110 on

September 11, 2001, is adopted as a final rule without change.

[FR Doc. 02–13360 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF DEFENSE

48 CFR Part 244

[DFARS Case 2000–D028]

Defense Federal Acquisition Regulation Supplement; Subcontract Commerciality Determinations

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the responsibilities of contractors and administrative contracting officers regarding determinations as to whether a subcontract item meets the definition of ''commercial item'' specified in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2000–D028.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the DFARS to specify that—

(1) The contractor will determine whether a particular subcontract item meets the definition of ''commercial item''; and

(2) When conducting a contractor purchasing system review (CPSR), the administrative contracting officer will review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of ''commercial item'' in FAR 2.101.

DoD published a proposed rule at 66 FR 47159 on September 11, 2001. Three sources submitted comments on the proposed rule. A summary of the comments and the DoD response is provided below:

Comment: Amend DFARS subpart 244.3 to add a requirement for the administrative contracting officer, when performing a CPSR, to ascertain whether the contractor is requiring its subcontractors to provide any form of cost or pricing data. This will provide insight as to whether prime contractors are correctly adhering to the definition of a commercial item.

DoD Response: The recommended additional requirement is beyond the intent of this DFARS rule. The intent of the rule is to clarify the responsibilities of contractors and administrative contracting officers regarding commercial item determinations for subcontracts, not to add new requirements for the performance of CPSRs. FAR subpart 44.3, as supplemented by this DFARS rule, provides sufficient policy regarding the extent of CPSRs.

Comment: The rule introduces additional confusion to the process of conducting CPSRs, which are now done on a risk evaluation basis. The rule does not have a threshold for the value of the prime contract or the subcontract. The rule will result in significant additional effort on the part of the buying organization to justify and support the commercial item determination for the subcontract.

DoD Response: Do not concur. In accordance with FAR 44.302, a CPSR is not performed for a specific contract. Rather, when a contractor's sales to the Government are expected to exceed $25 million during the next 12 months, the administrative contracting officer must perform a review to determine if a CPSR is needed. This rule does not change the CPSR process or increase the amount of Government oversight. The Government already had the authority to review all aspects of subcontracts that are subject to review as part of the CPSR. Documentation for commercial item determinations should be part of a contractor's normal business procedures; therefore, this rule should not result in significant additional effort.

Comment: Amend DFARS 244.402 to clarify that subcontractors are responsible for making commerciality determinations for lower-tier subcontracts.

DoD Response: The additional clarification is unnecessary, as the Government does not have privity of contract with subcontractors, and DoD administrative contracting officers do not review lower-tier subcontracts when conducting CPSRs.

Comment: The reference to FAR 15.403–1(c)(3) is unnecessary in that it pertains to the exceptions from obtaining cost or pricing data and does not clarify responsibilities for commercial item determinations.

DoD Response: The reference to FAR 15.403–1(c)(3) is relevant in situations where subcontract items are improperly designated as commercial and, as a result, are improperly exempted from cost or pricing data requirements. As outlined in FAR 44.305–3, recurring noncompliance with FAR 15.403 is a condition for withholding or withdrawing a contractor*s purchasing system approval. The language in DFARS 244.402(a) has been modified to make the point of the FAR reference clearer.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies responsibilities regarding commercial item determinations for subcontracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 244

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 244 is amended as follows:

1. The authority citation for 48 CFR part 244 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

2. Section 244.303 is added to read as follows:

244.303 Extent of review.

Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of ''commercial item'' in FAR 2.101.

3. Section 244.402 is added to read as follows:

244.402 Policy requirements.

(a) Contractors shall determine whether a particular subcontract item meets the definition of a commercial item. This requirement does not affect the contracting officer's responsibilities or determinations made under FAR 15.403–1(c)(3). Contractors are expected to exercise reasonable business judgment in making such

determinations, consistent with the guidelines for conducting market research in FAR part 10.

[FR Doc. 02–13358 Filed 5–30–02; 8:45am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 67, No. 105
Friday, May 31, 2002

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–103823–99]

RIN 1545–AX12

Guidance on Cost Recovery Under the Income Forecast Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to deductions available to taxpayers using the income forecast method of depreciation under section 167(g). These proposed regulations reflect changes to the law made by the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 and affect taxpayers that produce, own, or license films, videos, sound recordings, books, copyrights, patents, and certain other similar properties. This document also provides notice of a public hearing on these regulations.

DATES: Written comments must be received by August 29, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for September 4, 2002, at 10 a.m., must be received by August 13, 2002.

ADDRESSES: Send submissions to: CC:IT&A:RU (REG–103823–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:IT&A:RU (REG–103823–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments directly to the IRS Internet site at *www.irs.gov/regs.* A public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622–3110; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 to provide regulations under section 167(g) of the Internal Revenue Code of 1986 (Code). Section 167(g) was added to the Code by the Small Business Job Protection Act of 1996, Public Law 104–188, 1604 (110 Stat. 1755, 1836) (Aug. 20, 1996), and significant amendments were made to the provision by the Taxpayer Relief Act of 1997, Public Law 105–34, 1086 (111 Stat. 788, 957) (Aug. 5, 1997).

Explanation of Provisions

The income forecast method of depreciation has been a permissible method for certain properties since the early 1960s. The income forecast method permits taxpayers to recover the depreciable basis in property over the anticipated income to be earned from the property. The income forecast method is available for interests (including interests involving limited rights in property) in motion picture films, videotapes, sound recordings, copyrights, books, and patents. *See* Rev. Rul. 60–358 (1960–2 C.B. 68); Rev. Rul. 64–273 (1964–2 C.B. 62); Rev. Rul. 79–285 (1979–2 C.B. 91); and Rev. Rul. 89–62 (1989–1 C.B. 78). The income forecast method is appropriate for these types of property because they possess unique income earning characteristics (for example, the income earning potential of a film may vary as a direct result of the film's popularity) and, therefore, the economic usefulness of these properties cannot be measured adequately by the property's physical condition or by the passage of time. In 1996, Congress enacted statutory income forecast rules to ensure that, for certain properties, the allowances for depreciation appropriately match the basis of an income forecast property with the income derived therefrom. In 1997, Congress placed limitations on the type of property that could be depreciated using the income forecast method.

Computation of Allowances for Depreciation

The proposed regulations provide that, under the income forecast method, a taxpayer's allowance for depreciation for a given year for an income forecast property generally is an amount that bears the same relationship to the depreciable basis of the property that the ''current year income'' for that year bears to the ''forecasted total income'' for the property. The proposed regulations provide a revised computation for computing a taxpayer's allowance for depreciation in years when conditions necessitate using a revised forecasted total income that differs from the forecasted total income used in computing depreciation allowances in previous years. Pursuant to these rules, taxpayers may revise forecasted total income and use the revised computation in taxable years after income forecast property is placed in service when information becomes available that indicates that forecasted total income (or revised forecasted total income) previously used to compute income forecast depreciation is inaccurate. Under the revised computation, a taxpayer's allowance for depreciation for the current and all future years for an income forecast property is an amount that bears the same relationship to the unrecovered depreciable basis of the property that the current year income for that year bears to the result obtained by subtracting from revised forecasted total income for the property the amounts of current year income for prior taxable years. Taxpayers are required to use the revised computation in certain situations (discussed in this preamble under the heading of *Income From the Property*).

The proposed regulations also provide several special rules for computing allowances for depreciation under the income forecast method. A special rule applies for certain basis redeterminations whereby an additional ''catch up'' allowance for depreciation is allowed in the year that basis is redetermined. Under this special rule, the additional depreciation allowance is an amount equal to the cumulative allowances for depreciation that would have been permitted in previous years

had the basis redetermination amount been included in basis in the year the property was placed in service. It is intended that this additional allowance will ameliorate the potential back-loading of depreciation deductions that may otherwise occur if the additional amount were taken into account over the remaining income from the property and diminish the amount of look-back interest that may otherwise accrue. This special rule does not apply if the additional basis is treated as separate property.

Pursuant to section 167(g)(1)(C), a taxpayer's adjusted basis in an income forecast property is to be recovered by the end of the tenth taxable year following the taxable year in which the income forecast property is placed in service. The proposed regulations also provide that generally a taxpayer may deduct the adjusted basis in income forecast property in the year income from the property ceases completely and permanently (unless the income cessation arises in connection with the disposition of income forecast property). If additional amounts are paid or incurred with respect to income forecast property in taxable years after either of these special rules is applied, the additional amounts may be deducted when paid or incurred unless such amounts give rise to separate property.

Use of the income forecast method is elected on a property-by-property basis. Once elected, the income forecast method is a method of accounting that may not be changed without the consent of the Commissioner. Modifications to forecasted total income to take into account information that becomes available after the property is placed in service in accordance with these proposed regulations is not a change in a method of accounting requiring the Commissioner's consent.

Section 167(g) sets forth rules for the use of the income forecast method and any similar method. Thus, any method that calculates depreciation based on the flow of income generated by a property (or group of properties) is a ''similar method'' subject to the requirements of this regulation, including, e.g., the requirement that the look-back method be applied in certain circumstances. Congress did not identify any method that should be treated as a similar method. Treasury and the IRS seek comments on other methods that should be treated as coming within the scope of the term *any similar method.*

Commentators suggested that we specifically approve a method of depreciation based on the application of percentages derived from historical patterns of income for similar properties as a similar method because to do so would simplify the computation of depreciation deductions for large groupings of properties. This suggestion has not been adopted because it is not clear that the historical patterns of income used to apply the suggested approach will accurately reflect the income from any particular income forecast property. Moreover, this suggested approach is not predicated upon the unique income earning characteristics of an income forecast property.

Basis Rules

The cost of producing income forecast property is capitalized and recovered through an allowance for depreciation. The proposed regulations follow the general principles set forth in the regulations under sections 263, 263A, 446, and 461 for determining the basis of income forecast property. Commentators have written to Treasury and the IRS requesting guidance on various issues involving the timing of inclusion in basis of direct costs of income forecast property that are contingent upon the amount of income earned from the property (or other similar factors) and the means by which those costs may be deducted. In accordance with these requests, and in light of section 167(g)(1)(B), the proposed regulations address certain basis issues that are peculiar to the income forecast method of computing depreciation allowances.

Section 263A applies to income forecast property produced by the taxpayer. Section 1.263A–1(c)(2)(ii) provides that an amount required to be capitalized under section 263A may not be included in basis any earlier than the taxable year during which the amount is incurred within the meaning of § 1.446–1(c)(1)(ii). Section 1.446–1(c)(1)(ii) provides that under an accrual method of accounting a liability is incurred, and generally is taken into account for Federal income tax purposes, in the taxable year in which the ''all events test'' is satisfied. Sections 1.446–1(c)(1)(ii) and 1.461–1(a)(2) set forth the ''all events test'' which provides that a liability is incurred in the taxable year in which: (1) All the events have occurred that establish the fact of liability; (2) the amount of the liability can be determined with reasonable accuracy; and (3) economic performance has occurred with respect to the liability. Because section 167(g)(1)(B) provides that the adjusted basis of income forecast property depreciated using the income forecast method includes only amounts with respect to which the requirements of section 461(h) are satisfied, these rules are specifically restated in the proposed regulations.

The proposed regulations reiterate that contingent amounts that are either direct costs of the production of income forecast property or indirect costs properly allocable to the production of income forecast property are not added to basis until the taxable year in which the all events test, including the economic performance requirement of section 461(h), is satisfied. Under the proposed rules, the timing of the inclusion of certain of these costs in basis may be affected by § 1.461–1(a)(2)(iii)(A), § 1.461–1(a)(2)(iii)(D) and section 404.

Thus, the proposed regulations provide that contingent basis amounts that are either direct costs of income forecast property or indirect costs properly allocable to income forecast property are generally treated as basis redetermination amounts which increase the basis of income forecast property in the year paid or incurred. As noted above, the proposed regulations provide a special allowance applicable to certain basis redetermination amounts.

Commentators have also suggested that *Transamerica Corp.* v. *United States,* 999 F.2d 1362 (9th Cir. 1993), supports including contingent amounts in the basis of income forecast property beginning in the year the property is placed in service. In *Transamerica,* the Ninth Circuit interpreted Rev. Rul. 60–358, supra, as it applied in taxable years prior to the enactment of section 167(g), the economic performance requirements of section 461(h), the uniform capitalization requirement of section 263A, and other changes. The Ninth Circuit held that contingent basis amounts may be included in the basis of income forecast property in the year that the property is placed in service so long as the forecasted total income used in the computation of depreciation under the income forecast method includes an amount of income from the property sufficient to indicate that the contingency will be satisfied. Commentators urge the continuing application of the *Transamerica* approach because this approach matches most closely the costs of creating an income forecast property with the income earned therefrom. Treasury and the IRS recognize that it may appear to be reasonable to include estimated amounts in the basis of income forecast property when the operation of the income forecast formula requires the use of estimated amounts in the forecasts of income that are used to

determine the amount of income forecast depreciation, particularly where the income forecasts indicate that the contingencies will be resolved, and resolved relatively quickly, after the property is placed in service. Treasury and the IRS also recognize that the historic operation of the income forecast formula deters taxpayers from increasing their forecast of income in order to increase the contingent basis amounts includible in the basis of income forecast property because the increases in forecasted total income operate to increase the denominator of the income forecast formula and thus diminish the amount of depreciation of the income forecast property. This deterrent effect operates in most (but not all) situations to prevent the cumulative amount of income forecast depreciation deductions in any given taxable year from exceeding the total amount actually incurred in any given taxable year, which is the primary concern with the inclusion of contingent amounts in basis. However, because Congress specifically provided in section 167(g)(1)(B) that the adjusted basis of income forecast property includes only those amounts which satisfy the requirements of section 461(h) and because all events that establish the fact of the liability for contingent amounts have not occurred, the proposed regulations do not follow the *Transamerica* approach.

Commentators have also argued that *Associated Patentees, Inc.* v. *Commissioner,* 4 T.C. 979 (1945), supports an immediate deduction for contingent basis amounts arising from the provision of either property or services in the production of income forecast property that are paid or incurred in years after the year in which income forecast property is placed in service. The proposed regulations do not adopt this interpretation of *Associated Patentees* because providing a more favorable cost recovery rule for contingent basis amounts than for fixed amounts would create an unwarranted incentive for characterizing costs as contingent amounts. Contingent basis amounts arising from the provision of either property or services in the production of income forecast property must be capitalized into the basis of income forecast property in accordance with § 1.263A–1(e).

Salvage Value

The proposed regulations do not provide that the basis upon which depreciation is computed under the income forecast method is reduced for salvage value. The unique statutory scheme Congress adopted for income forecast property requires this departure from the rules generally applicable to property depreciated under section 167, and from the provisions of Rev. Rul. 60–358, supra, which had governed income forecast depreciation prior to the enactment of section 167(g). Based on the provisions of section 167(g), Congress intended that taxpayers be able to recover their entire basis in income forecast property within the period beginning with the year income forecast property is placed in service and ending with the 10th taxable year after the year the property is placed in service and that basis be recovered over the total income earned in connection with the property within that same time frame.

Section 167(g)(1)(C) requires taxpayers to recover the adjusted basis of income forecast property as of the beginning of the 10th taxable year after the property is placed in service as an allowance for depreciation in such year. The term *adjusted basis* refers to the basis of property for purposes of determining gain or loss, which is determined generally by adjusting the cost or other basis in property prescribed by section 1012 by the adjustments required by section 1016. See § 1.1011–1. The use of this term in section 167(g)(1)(C) indicates that Congress intended that the entire basis of an income forecast property be recovered within the period beginning with the year income forecast property is placed in service and ending with the 10th taxable year after the year the property is placed in service. The legislative history confirms this reading of the provision, stating that ''(a)ny costs that are not recovered by the end of the tenth taxable year after the property was placed in service may be taken into account as depreciation in such year.'' H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 299 (1996).

Consistent with this rule, the estimated income from the property is all the income projected to be earned over the first eleven taxable years the property is used by any taxpayer. Under section 167(g)(1)(A), the adjusted basis of income forecast property is to be recovered through allowances for income forecast depreciation over the ''amount of income earned in connection with the property'' through the end of the tenth taxable year after the year in which the income forecast property is placed in service. The legislative history to section 167(g)(1)(A) states that ''income to be taken into account under the income forecast method includes all estimated income generated by the property.'' H.R. Conf. Rep. No. 737, at 297. By referring to income generated by the property, and not to income to be earned by the taxpayer, Congress established a regime whereby a taxpayer using the income forecast method must include within forecasted total income amounts that are to be earned not only by the taxpayer, but also by any subsequent owner during the eleven year period.

Income From the Property

The income forecast formula uses the ratio of current year income to forecasted total income from the property to determine the current allowance for depreciation. Both current year income and forecasted total income are to be computed in accordance with a taxpayer's method of accounting. Pursuant to Code section 167(g)(1)(A) and (g)(5)(C), forecasted total income is to include all anticipated income from any source through the end of the tenth taxable year following the year in which the income forecast property is placed in service (except, as discussed below, in the year of disposition of income forecast property). Thus, for example, in the case of a film, such income includes income from foreign and domestic theatrical, television, and other releases and syndications; income from video tape releases, sales, rentals, and syndications; and incidental income associated with the property such as income from the financial exploitation of characters, designs, titles, scripts, and scores, but only to the extent that such incidental income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related to the taxpayer (within the meaning of section 267(b)). Apportionment rules are provided for situations when income from the exploitation of characters, designs, titles, scripts, scores, and other incidental income may relate to more than one income forecast property.

Under the proposed regulations, taxpayers are required at the end of the taxable year in which income forecast property is placed in service to make an accurate projection of all anticipated income to be earned from the income forecast property based on the conditions known to exist at that time. This estimate is referred to as forecasted total income. As discussed above, forecasted total income includes not only the income that the taxpayer forecasts it will earn by the end of the tenth taxable year after the year in which the income forecast property is placed in service, but also income that may be earned by other owners of the income forecast property during that same period.

The proposed regulations also require taxpayers to evaluate the accuracy of their forecasts annually. In order to perform these evaluations of forecasted total income, taxpayers must compute revised forecasted total income. Revised forecasted total income is the sum of current year income for the current taxable year and all prior taxable years, plus all income from the income forecast property that the taxpayer reasonably believes will be includible in current year income in taxable years after the current taxable year up to and including the 10th taxable year after the year in which the income forecast property is placed in service. Taxpayers are required to use the revised computation if forecasted total income in the immediately preceding taxable year falls outside a range bounded on the low end by 90 percent of revised forecasted total income for the current taxable year, and on the upper end by 110 percent of revised forecasted total income for the current taxable year. (In the situation where revised forecasted total income was used to compute income forecast depreciation in the immediately preceding taxable year, this comparison is made by comparing the revised forecasted total income for the current taxable year to revised forecasted total income for the immediately preceding taxable year.) Taxpayers may elect to alter their computations of income forecast depreciation (using the revised computation detailed below) when revised forecasted total income differs from forecasted total income.

Pursuant to Code section 167(g)(5)(B), income from the syndication of a television series need not be included in the income forecast computation prior to the fourth taxable year beginning after the date the first episode of the series is placed in service, unless an arrangement relating to future syndication exists. In such a case, syndication income is included in the income forecast computation at the time the arrangement relating to future syndication is made. This special rule also applies for purposes of applying the look-back method.

Special rules apply if income forecast property is disposed of prior to the end of the 10th taxable year after the year the property is placed in service. In such a case, section 167(g)(5)(E) requires that for purposes of applying the look-back method, income from the disposition of the property is to be taken into account. Failure to apply a similar rule for purposes of computing income forecast depreciation in the year of disposition may permit a depreciation differential that would not be corrected through the operation of the look-back method (because the differential would arise in a year for which the period of time to which look-back interest would apply would be zero). Accordingly, the proposed regulations require taxpayers to take income from the disposition of income forecast property into account in the year of disposition in computing revised forecasted total income both for purposes of computing its income forecast depreciation and for purposes of applying the look-back method.

Income Forecast Property

Section 167(g)(6) limits the types of property for which the income forecast method may be utilized. The income forecast method is available for interests (including interests involving limited rights in property) in motion picture films, video tapes, sound recordings, copyrights, books, and patents. In addition, section 167(g)(6)(E) provides the authority for Treasury and the IRS to extend the income forecast method to other types of property. The proposed regulations extend the method to theatrical productions and authorize the Commissioner to publish guidance designating other properties.

The proposed regulations generally require the income forecast method to be applied on a property-by-property basis. In certain limited circumstances, interests in multiple properties may be grouped together and treated as a single income forecast property. The ability to treat multiple income forecast properties as a single property for purposes of applying the income forecast method of depreciation is limited, however, to certain episodes of a television series or to multiple interests in specified income forecast properties acquired for broadcast pursuant to a single contract. The special allowance applicable to certain basis redetermination amounts is not available to basis redetermination amounts associated with interests in multiple income forecast properties treated as a single income forecast property under these rules. Commentators have requested that broad groupings of dissimilar properties be permitted in accordance with historic financial accounting practices. Because it is not clear that income would be clearly reflected if broader groupings of properties were permitted, this suggestion has not been incorporated into the proposed regulations. Treasury and the IRS request comments on whether the proposed permitted groupings are appropriate and whether additional groupings should be allowed.

Under section 167(g)(5)(A)(ii), an amount incurred after income forecast property is placed in service that is significant and that gives rise to a significant increase in income when compared to the previous amount of forecasted total income is treated as a separate income forecast property and depreciated accordingly. Under the proposed regulations, an amount that does not exceed the lesser of 5 percent of the depreciable basis of the income forecast property with which the amount is associated or $100,000 is not considered significant for this purpose. An amount incurred after income forecast property is placed in service that is not significant or that does not give rise to a significant increase in income is subject to the general rules and is treated as a basis redetermination amount.

In addition, a cost incurred in a taxable year following the year in which the taxpayer has recovered through depreciation the entire adjusted basis of an income forecast property is treated as a separate income forecast property. If it is expected to give rise to a significant increase in income, the amount of the cost is treated as income forecast property that is newly placed in service. Otherwise, it is deductible in the year paid or incurred.

Look-back

In general, the look-back method applies any time property is depreciated using the income forecast method. A taxpayer using the income forecast method is required to pay, or is entitled to receive, interest computed under the look-back method for any year to which the look-back requirement applies. A taxpayer must pay look-back interest if deductions are accelerated due to the underestimation of total income expected to be earned with respect to the property. Conversely, a taxpayer is entitled to receive look-back interest if deductions are delayed as a result of overestimating total income expected to be earned with respect to the property. The look-back method applies separately to each income forecast property, unless properties are aggregated pursuant to special rules contained in the proposed regulations.

Generally, the look-back method is applied in the third and tenth taxable years following the year in which the income forecast property is placed in service. The look-back method also applies in the year income from the income forecast property ceases with respect to the taxpayer (and with respect to all persons who would be treated as a single taxpayer with the taxpayer under rules similar to those in section 41(f)(1)).

The look-back method does not apply to any income forecast property the basis of which is $100,000 or less in the year the look-back method would otherwise apply (redetermined without any reduction for depreciation allowed or allowable). In addition, the look-back method is not applicable for any year which would otherwise be a recomputation year if a 10 percent test is satisfied. The 10 percent test is met if forecasted total income (and, if applicable, revised forecasted total income) for each prior year is greater than 90 percent of revised forecasted total income for the year which would otherwise be a recomputation year and is less than 110 percent of revised forecasted total income for the year which would otherwise be a recomputation year. If the look-back method is applied for the third taxable year following the year in which income forecast property is placed in service, a special rule applies in determining whether the 10 percent test is satisfied in any subsequent year. Under the special rule, the amount of the forecasted total income or the revised forecasted total income for each taxable year up to and including the third taxable year following the year in which income forecast property is placed in service is deemed to be equal to the revised forecasted total income that was used for purposes of applying the look-back method in the third taxable year following the year in which income forecast property is placed in service.

In order to apply the look-back method, prior year allowances for depreciation for income forecast property are recomputed using revised forecasted total income for the recomputation year in lieu of forecasted total income (or, if appropriate, revised forecasted income) from the property that was used in the computation of depreciation under the income forecast method in the prior year. If a taxpayer sells or otherwise disposes of income forecast property, the amount realized upon the disposition of the property is included in determining revised forecasted total income from the property in the year of disposition. These recomputed depreciation allowances are then used to determine either a hypothetical overpayment of tax or a hypothetical underpayment of tax.

Generally, taxpayers must determine the hypothetical overpayment or underpayment of tax arising from the change in depreciation allowances by recomputing their tax liability. Thus, a taxpayer's tax liability for each prior year is recomputed by substituting the recomputed depreciation allowances for the depreciation allowances originally claimed. The recomputed tax liability is then compared to the taxpayer's actual liability. For purposes of this comparison, the taxpayer must determine the actual tax liability for each prior year based on the information available on the later of (1) The due date of the return, including extensions, (2) the date of an amended return, (3) the date a return is adjusted by examination, or (4) the date of any previous application of the look-back requirement for the income forecast property. The result of this comparison is a hypothetical overpayment or underpayment of tax for each prior year in which allowances for depreciation were claimed for income forecast property subject to the look-back method.

Pass-through entities that are not closely-held pass-through entities must use a simplified method to compute their hypothetical overpayment or underpayment for each prior year in which allowances for depreciation were claimed for income forecast property subject to the look-back method. Under the simplified method, taxpayers apply a set rate (i.e., the highest rate applicable under section 1 or 11) to the net changes in depreciation allowances for each year. Treasury and the IRS considered, but did not provide, an election for other taxpayers to use the simplified method similar to the election set forth in § 1.460–6(d)(4)(ii). Treasury and the IRS request comments on whether the use of the simplified method should be extended to taxpayers other than those required to use the simplified method, and if so, whether additional safeguards beyond the consistency rules for related taxpayers, the rules precluding changes from the simplified method without permission, and the overpayment ceiling would be appropriate.

Regardless of the method used, the resulting hypothetical overpayments or underpayments are then used to compute interest that is to be charged or credited on each of these amounts. Interest is generally computed from the due date of the return (not including extensions) for the years in which changes in depreciation allowances occur to the due date of the recomputation year (not including extensions). Special rules are provided for taxpayers who do not use the simplified method where changes in depreciation allowances affect tax liability in years other than the year in which the changes in depreciation allowances occur. Interest is computed using the overpayment rate under section 6621. The amounts resulting from these computations are netted to arrive at look-back interest due to the taxpayer or payable to the government for the recomputation year. For purposes of computing taxable income, look-back interest is treated as interest on an overpayment or underpayment of tax. Under section 167(g)(5)(D), look-back interest required to be paid is treated as a tax liability for penalty purposes.

Proposed Effective Date

The regulations are proposed to apply to property placed in service on or after the date that final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies, if written) that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 4, 2002, at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name

placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by August 13, 2002.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.167(n)–0 through 1.167(n)–7 are added to read as follows:

§ 1.167(n)–0 Outline of regulation sections for section 167(g).

This section lists the major captions contained in § 1.167(n)–1 through § 1.167(n)–7

§ 1.167(n)–1 Income forecast method.

(a) Overview.
(b) Method of accounting.
(1) In general.
(2) Election of the income forecast method.

§ 1.167(n)–2 Basis.

(a) Depreciable basis.
(1) In general.
(2) Timing of basis determinations and redeterminations.
(3) Separate Property.
(b) Basis redeterminations.
(c) Unrecovered depreciable basis.
(d) Example.

§ 1.167(n)–3 Income from the property.

(a) Current year income.
(1) In general.
(2) Special rule for advance payments.
(b) Forecasted total income.
(c) Revised forecasted total income.
(d) Special rules.
(1) Disposition of the property.
(2) Syndication income from television series.
(3) Apportionment of income in certain circumstances.
(4) Examples.

§ 1.167(n)–4 Computation of depreciation using the income forecast method.

(a) Computation of depreciation allowance.
(b) Revised computation.
(1) Change in estimated income.
(2) Requirement to use the revised computation.
(c) Basis redeterminations.
(1) Calculation of depreciation allowance.
(2) Example.
(d) Special rules.
(1) Final year depreciation.
(2) Certain basis redeterminations.
(3) Disposition of property.
(4) Separate property.
(e) Examples.

§ 1.167(n)–5 Property for which the income forecast method may be used.

(a) In general.
(b) Specific exclusions.
(c) Costs treated as separate property.
(1) Costs giving rise to a significant increase in income.
(2) Significant increase in income.
(3) Special rule for costs paid or incurred after the end of the final year.
(4) Time separate property is placed in service.
(5) Examples.
(d) Aggregations treated as a single income forecast property.
(1) Multiple episodes of a television series produced in the same taxable year.
(2) Multiple episodes of a television series produced in more than one taxable year.
(3) Multiple interests acquired pursuant to a single contract.
(4) Videocassettes and DVDs.

§ 1.167(n)–6 Look-back method.

(a) Application of the look-back method.
(b) Operation of the look-back method.
(1) In general.
(2) Property-by-property application.
(c) Recalculation of depreciation allowances.
(1) Computation.
(2) Revised forecasted total income from the property.
(3) Special rule for basis redeterminations.
(d) Hypothetical overpayment or underpayment of tax.
(1) In general.
(2) Hypothetical overpayment or underpayment, actual recomputation.
(3) Hypothetical overpayment or underpayment, simplified method.
(4) Definitions.
(e) Recomputation year.
(1) In general.
(2) Look-back method inapplicable in certain de minimis cases.
(f) De minimis basis exception.
(g) Treatment of look-back interest.
(1) In general.
(2) Additional interest due on interest only after tax liability due.
(3) Timing of look-back interest.
(4) Statute of limitations; compounding of interest on look-back interest.
(h) Example.

§ 1.167(n)–7 Effective date.

§ 1.167(n)–1 Income forecast method.

(a) *Overview.* This section and §§ 1.167(n)–2 through 1.167(n)–7 provide rules for computing depreciation allowances under section 167 for property depreciated using the income forecast method. Because the income forecast method is only appropriate for property with unique income earning characteristics, only property specified in § 1.167(n)–5 may be depreciated under the income forecast method. A taxpayer using the income forecast method generally computes depreciation allowances each year based upon the ratio of current year income to forecasted total income from the property as described in § 1.167(n)–4. Current year income and forecasted total income are determined in accordance with the provisions of § 1.167(n)–3. In addition, a taxpayer must determine depreciable basis for income forecast property in accordance with the basis rules of § 1.167(n)–2. Property depreciated under the income forecast method generally is subject to the look-back rules of § 1.167(n)–6 whereby taxpayers must determine the amount of interest owed on any hypothetical underpayment of tax, or due on any hypothetical overpayment of tax, attributable to the use of estimated income in the computation of income forecast depreciation. Under these rules, look-back computations must be performed in specified recomputation years, which are generally the 3rd and 10th taxable years after the taxable year that the property is placed in service.

(b) *Method of accounting*—(1) *In general.* The computation of depreciation under the income forecast method is elected on a property-by-property basis, and is a method of accounting under section 446 that may not be changed without the consent of the Commissioner. However, a change in forecasted total income in accordance with the rules of § 1.167(n)–4 is not a change in method of accounting requiring the Commissioner's consent.

(2) *Election of the income forecast method.* A taxpayer elects the income forecast method by computing allowances for depreciation for the eligible property in accordance with the provisions of this section and

§§ 1.167(n)–2 through § 1.167(n)–6. See § 1.167(n)–5 for rules regarding eligible property.

§ 1.167(n)–2 Basis.

(a) *Depreciable basis*—(1) *In general.* The basis upon which the allowance for depreciation is computed with respect to income forecast property is the basis of the income forecast property for purposes of section 1011 without regard to the adjustments described in section 1016(a)(2) and (3).

(2) *Timing of basis determinations and redeterminations.* Costs paid or incurred in or after the taxable year in which the income forecast property is placed in service are taken into account in accordance with a taxpayer's method of accounting in redetermining the basis of income forecast property in the taxable year paid or incurred (i.e., when all events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability). See § 1.446–1(c)(1)(i) and (ii), 1.461–1(a)(1) and (2), and 1.263A–1(c). Accordingly, contingent payments may not be included in the basis of income forecast property when the property is placed in service, but are included in the basis of income forecast property in the taxable year in which they are paid or incurred, even if the forecasted total income used in the computation of income forecast depreciation allowances is sufficient to indicate that the contingency will be satisfied.

(3) *Separate property.* Certain amounts paid or incurred in taxable years after income forecast property is placed in service are treated as separate property for purposes of computing depreciation allowances under the income forecast method. See § 1.167(n)–5(c).

(b) *Basis redeterminations.* If an amount required to be capitalized into the basis of income forecast property is paid or incurred after the income forecast property is placed in service, and if the amount required to be capitalized is not treated as separate property in accordance with § 1.167(n)–5(c), the basis of the income forecast property is redetermined and the amount required to be capitalized is the basis redetermination amount. The redetermined basis of the income forecast property is the depreciable basis of the income forecast property increased by the basis redetermination amount. In the year basis is redetermined (and in subsequent taxable years), the redetermined basis must be used to determine depreciation under the income forecast method. An additional allowance for depreciation under the income forecast method is allowed in the taxable year the basis of certain income forecast property is redetermined. See § 1.167(n)–4(c).

(c) *Unrecovered depreciable basis.* For any taxable year, the unrecovered depreciable basis of an income forecast property is the depreciable basis of the property less the adjustments described in section 1016(a)(2) and (3).

(d) *Example.* The provisions of § 1.167(n)–2 are illustrated by the following example:

(i) *Studio* contracts with *Actor* to star in a motion picture film to be produced by *Studio.* Both *Studio* and *Actor* are calendar year taxpayers; *Studio* is an accrual basis taxpayer and *Actor* is a cash basis taxpayer. As compensation for Actor's services, the contract guarantees *Actor* a payment of five percent of the gross income from the film, beginning after the film has earned a total gross income (net of distribution costs) of $100x. *Studio* estimates that the film will earn a total gross income of $160x by the end of the 10th taxable year following the taxable year that the film is placed in service. The film is placed in service and earns $65x of gross income in year one, $30x in year two, and $25x in year three. Because the income from the film does not exceed $100x in either year one or year two, *Studio* pays nothing under the contract to *Actor* in years one and two. In year three, the cumulative income from the film reaches $120x, which exceeds the $100x threshold by $20x. Based on this excess, *Studio* calculates that it owes *Actor* $1x, calculated by multiplying $20x by *Actor*'s contractual percentage of five percent. *Studio* pays $1x to *Actor* 20 days after the end of year three.

(ii) *Studio* may not include the $1x paid to *Actor* in the basis of the film in years one or two because *Studio* does not have a fixed liability to pay *Actor* any amount under the contract in years one and two. Furthermore, while *Studio* does have a fixed liability to pay *Actor* $1x in year three, the requirements of section 404 are not met in year three and *Studio* thus may not include the $1x in the basis of the film in year three. In year four, when section 404 is satisfied, *Studio* incurs the $1x in accordance with § 1.263A–1(c) and increases its basis in the film. The $1x is treated as a basis redetermination amount under § 1.167(n)–2(b) in year four.

§ 1.167(n)–3 Income from the property.

(a) *Current year income*—(1) *In general.* Current year income is the income from an income forecast property for the current year (less the distribution costs of the income forecast property for such year), determined in accordance with the taxpayer's method of accounting. All income earned in connection with the income forecast property is included in current year income, except as provided in paragraph (d) of this section. In the case of a film, television show, or similar property, such income includes, but is not limited to—

(i) Income from foreign and domestic theatrical, television, and other releases and syndications;

(ii) Income from releases, sales, rentals, and syndications of video tape, DVD, and other media; and

(iii) Incidental income associated with the property, such as income from the financial exploitation of characters, designs, titles, scripts, and scores, but only to the extent that such incidental income is earned in connection with the ultimate use of such items by, or the ultimate sale of merchandise to, persons who are not related to the taxpayer (within the meaning of section 267(b)).

(2) *Special rule for advance payments.* In the year that income forecast property is placed in service, current year income for an income forecast property includes income included in gross income for any prior taxable year in connection with the property. This paragraph applies separately to any cost treated as separate property under § 1.167(n)–5(c).

(b) *Forecasted total income.* Forecasted total income is the sum of current year income for the year that income forecast property is placed in service, plus all income from the income forecast property that the taxpayer reasonably believes will be includible in current year income in subsequent taxable years (as adjusted for distribution costs) up to and including the 10th taxable year after the year in which the income forecast property is placed in service. Forecasted total income is based on the conditions known to exist at the end of the taxable year for which the income forecast property is placed in service.

(c) *Revised forecasted total income.* If information is discovered in a taxable year following the year in which income forecast property is placed in service that indicates that forecasted total income is inaccurate, a taxpayer must compute revised forecasted total income for the taxable year. Revised forecasted total income is based on the conditions known to exist at the end of the taxable year for which the revised forecast is being made. Revised forecasted total income for the taxable year is the sum of current year income for the taxable year and all prior taxable years, plus all income from the income forecast property that the taxpayer reasonably believes will be includible in current year income in taxable years after the current taxable year up to and including the 10th taxable year after the year in which the income forecast property is placed in service. Where a taxpayer

computes revised forecasted total income in accordance with this § 1.167(n)–3(c), see § 1.167(n)–4(b) for the computation of the allowance for income forecast depreciation.

(d) *Special rules*—(1) *Disposition of the property.* In computing the depreciation allowance for an income forecast property, income from the sale or other disposition of income forecast property is not included in current year income. However, if the income forecast property is disposed of prior to the end of the 10th taxable year following the taxable year in which the property is placed in service, income from the sale or other disposition of income forecast property is taken into account in calculating revised forecasted total income both for purposes of calculating the allowance for depreciation in the year of disposition and for purposes of applying look-back. See § 1.167(n)–4(d)(3) and § 1.167(n)–6(c)(2).

(2) *Syndication income from television series.* (i) In the case of a television series produced for distribution on television networks, current year income and forecasted total income (or, if applicable, revised forecasted total income) used in the computation of the depreciation allowance for such property under § 1.167(n)–4 need not include income from syndication of the television series before the earlier of—

(A) The fourth taxable year beginning after the date the first episode in the series is placed in service; or

(B) The earliest taxable year in which the taxpayer has an arrangement relating to the syndication of the series.

(ii) For purposes of this paragraph (d)(2), an arrangement relating to syndication of a series of television shows means any arrangement other than the first run exhibition agreement. For example, an arrangement for exhibition of a television series by individual television stations is an arrangement for syndication if it results in an exhibition of one or more episodes of the series beginning after one or more episodes of the series have been exhibited on a television network. A first run exhibition agreement is an agreement under which any episode (including a pilot episode) of a television series is first placed in service within a particular market.

(3) *Apportionment of income in certain circumstances.* When income from a particular source relates to more than one income forecast property the taxpayer must make a reasonable allocation of the income among those properties based on all relevant factors. Situations where allocation is necessary include income generated by a syndication arrangement involving more than one income forecast property, incidental income described in paragraph (a)(1)(iii) of this section that relates to more than one motion picture, and income associated with income forecast property when expenditures relating to the property have given rise to separate property as defined in § 1.167(n)–5(c). For example, when a taxpayer sells or licenses merchandise that features the likeness of a character that has appeared in more than one film, relevant factors might include merchandise sales figures prior to the release of the subsequent film, specific identification of certain merchandise with one particular film, and the taxpayer's prior experience with similar situations.

(4) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. C produces a motion picture film featuring the adventures of a fictional character. *C* sells merchandise using the character's image, enters into licensing agreements with unrelated parties for the use of the image, and uses the image to promote a ride at an amusement park that is wholly owned by *C*. Pursuant to paragraph (a)(1) of this section, income from the sales of merchandise by *C* to consumers and income from the licensing agreements are included in current year income. No portion of the admission fees for the amusement park is included in current year income because the amusement part is wholly owned by *C*.

Example 2. Assume the same facts as in *Example 1. C* forecasts that the cumulative amount of current year income it will earn (net of distribution costs) from the year it places the motion picture film in service through the end of the 7th taxable year thereafter to be $345x. *C* also forecasts that the motion picture film will earn current year income of $155x from the beginning of the 8th taxable year through the end of the 10th taxable year after the year the income forecast property is placed in service. *C* anticipates the sale of the motion picture film at the end of the 7th taxable year after the year the property is placed in service and in fact sells the motion picture film for $200x on the last day of the 7th taxable year after the year the property is placed in service. *C*'s computations of forecasted total income must reflect the fact that *C* forecasts that $500x will be earned by the motion picture film through the end of the 10th taxable year after the year the property is placed in service ($345x from the year the film is placed in service through the end of the 7th taxable year after the taxable year that the property was placed in service, plus $155x *C* forecasts from the beginning of the 8th taxable year through the end of the 10th taxable year after the year the property is placed in service). Even though *C* only expects to earn $345x prior to the sale of the film, *C* may not use $345x as forecasted total income in computing its depreciation allowance under the income forecast method. Similarly, *C* may not use the combination of the amounts it expects to earn prior to the sale ($345x) plus the anticipated sales proceeds ($200x) or $545x as forecasted total income, except when computing its depreciation allowance for the 7th taxable year after the year in which the income forecast property was placed in service and for purposes of computing look-back interest.

§ 1.167(n)–4 Computation of depreciation using the income forecast method.

(a) *Computation of depreciation allowance.* Generally, the depreciation allowance for an income forecast property for a given taxable year is computed by multiplying the depreciable or redetermined basis of the property (as defined in § 1.167(n)–2) by a fraction, the numerator of which is current year income (as defined in § 1.167(n)–3(a)) and the denominator of which is forecasted total income (as defined in § 1.167(n)–3(b)).

(b) *Revised computation*—(1) *Change in estimated income.* The depreciation allowance for an income forecast property for any taxable year following the year in which income forecast property is placed in service may be computed using the computation provided in this paragraph (b)(1) if revised forecasted total income differs from forecasted total income. Thus, for example, a taxpayer using the income forecast method for a motion picture may revise upward the forecast of total income from the motion picture (to arrive at revised forecasted total income) in a taxable year wherein the taxpayer discovers that the motion picture is more popular than originally expected, and may thereafter use the revised computation to compute the allowance for income forecast depreciation for the motion picture. Under the revised computation, the unrecovered depreciable basis of the income forecast property (as defined in § 1.167(n)–2(c)) is multiplied by a fraction, the numerator of which is current year income and the denominator of which is obtained by subtracting from revised forecasted total income the amounts of current year income from prior taxable years.

(2) *Requirement to use the revised computation.* The revised computation described in paragraph (b)(1) of this section must be used in any taxable year following the year in which income forecast property is placed in service if forecasted total income (as defined in § 1.167(n)–3(b)) (or, if applicable, revised forecasted total income (as defined in § 1.167(n)–3(c)) in the immediately preceding taxable year is either—

(i) Less than 90 percent of revised forecasted total income for the taxable year; or

(ii) Greater than 110 percent of revised forecasted total income for the taxable year.

(c) *Basis redeterminations*—(1) *Calculation of depreciation allowance.* An additional depreciation allowance is available under this paragraph in the taxable year that basis is redetermined under § 1.167(n)–2(b) when that taxable year is subsequent to the taxable year in which income forecast property is placed in service, but prior to the 10th taxable year following the taxable year in which the property is placed in service. The additional depreciation allowance is that portion of the basis redetermination amount that would have been recovered through depreciation allowances in prior taxable years if the basis redetermination amount had been included in depreciable basis in the taxable year that the property was placed in service. This § 1.167(n)–4(c) does not apply to property treated as a single income forecast property pursuant to § 1.167(n)–5(d)(1) through (4).

(2) *Example.* The provisions of paragraph (c)(1) of this section are illustrated by the following example:

Example. D, an accrual basis movie producer, enters into a contract with *E*, an author, under which *D* will make a film based on *E*'s book. *E* performs no services for *D*, but merely permits *D* to use the book as a basis for *D*'s film. *D* pays *E* a fixed dollar amount upon entry into the agreement and promises to pay *E* a contingent payment of five percent of *D*'s income from the film, beginning after the film has earned $100,000 (net of distribution costs). *D* estimates that forecasted total income from the film will be $200,000. The film earns $65,000 of current year income in year one, $30,000 in year two, and $25,000 in year three. *D* takes allowances for depreciation in year one ($65,000 divided by $200,000, multiplied by the basis of the film) and year two ($30,000 divided by $200,000, multiplied by the basis of the film). In year three, *D*'s liability to *E* becomes fixed and *D* pays *E* $1,000. The $1,000 incurred by *D* is a basis redetermination amount that increases the basis of the film for purposes of computing *D*'s depreciation allowance for the film for year three. In addition to the year three allowance based on current year income ($25,000 divided by $200,000 multiplied by the basis of the film, which includes for year three the $1,000 basis redetermination amount), *D* is entitled to an additional allowance for depreciation for year three under paragraph (c)(1). This additional allowance is $475, the sum of the allowance of $325 that would have been allowed in year one ($65,000 divided by $200,000, multiplied by the $1,000 payment to *E*) and the allowance of $150 that would have been allowed in year two ($30,000 divided by $200,000, multiplied by $1,000) if the $1,000 had been included in basis in the year that the film was placed in service.

(d) *Special rules*—(1) *Final year depreciation.* Except as provided in paragraphs (d)(2) and (3) of this section, a taxpayer may deduct as a depreciation allowance the remaining depreciable basis of income forecast property depreciated under the income forecast method in the earlier of—

(i) The year in which the taxpayer reasonably believes, based on the conditions known to exist at the end of the taxable year, that no income from the income forecast property will be included in current year income in any subsequent taxable year up to and including the 10th taxable year following the taxable year the income forecast property is placed in service; or

(ii) The 10th taxable year following the taxable year the income forecast property is placed in service.

(2) *Certain basis redeterminations.* A taxpayer may deduct as a depreciation allowance the amount of any basis redetermination that occurs in a taxable year in which the taxpayer reasonably believes, based on the conditions known to exist at the end of the taxable year, that no income from the income forecast property will be included in current year income in any subsequent taxable year. In addition, a taxpayer may deduct as a depreciation allowance the amount of any basis redetermination that occurs in a taxable year following a taxable year in which a deduction is allowable under paragraph (d)(1) of this section.

(3) *Disposition of property.* Paragraph (d)(1) of this section does not apply to income forecast property that is sold or otherwise disposed of before the end of the 10th taxable year following the taxable year that the property is placed in service. In the case of such a disposition, the allowance for depreciation in the year of disposition is calculated by multiplying the depreciable basis (or, if applicable, the redetermined basis) of the property by a fraction, the numerator of which is current year income and the denominator of which is the sum of the amount realized on the disposition of the property plus all amounts included in current year income in the year of disposition and in taxable years prior to the year of disposition.

(4) *Separate property.* The deductions provided in paragraphs (d)(1) and (2) of this section apply separately to property that is treated as separate property under § 1.167(n)–5(c).

(e) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. F places in service income forecast property with a depreciable basis of $100x, and estimates that forecasted total income from the property will be $200x. In taxable year one, current year income is $80x. The depreciation allowance for year one is $40x, computed by multiplying the depreciable basis of the property of $100x by the fraction obtained by dividing current year income of $80x by forecasted total income of $200x.

Example 2. Assume the same facts as in *Example 1.* In year two, *F*'s current year income is $40x. In addition, *F* computes revised forecasted total income to be $176x. *F* is required to compute its depreciation allowance for this property using the revised computation of paragraph (b)(1) of this section because forecasted total income in year one of $200x is greater than 110 percent of revised forecasted total income in year two (110 percent of $176x = $193.6x). The depreciation allowance for taxable year two computed under the revised computation is $25x, computed by multiplying the unrecovered depreciable basis of $60x by the fraction obtained by dividing current year income of $40x by $96x (revised forecasted total income of $176x less current year income from prior taxable years of $80x).

Example 3. Assume the same facts as in *Example 2.* Because *F* used the revised computation in year two, the revised computation applies in year three. In year three, *F*'s current year income is $32x. The depreciation allowance for year three computed under the revised computation is $20x, computed by multiplying the unrecovered depreciable basis of $60x by the fraction obtained by dividing current year income of $32x by $96x (revised forecasted total income of $176x less current year income from taxable years prior to the change in estimate taxable year of $80x).

§ 1.167(n)–5 Property for which the income forecast method may be used.

(a) *In general.* The depreciation allowance under § 1.167(n)–4 may be computed under the income forecast method only with respect to eligible property. Eligible property is limited to an interest (including interests involving limited rights in property) in the following property—

(1) Property described in section 168(f)(3) and (4);

(2) Copyrights;

(3) Books;

(4) Patents;

(5) Theatrical productions; and

(6) Other property as designated in published guidance by the Commissioner.

(b) *Specific exclusions.* The income forecast method does not apply to any amortizable section 197 intangible (as defined in section 197(c) and § 1.197–2(d)).

(c) *Costs treated as separate property*—(1) *Costs giving rise to a significant increase in income*—(i) *In general.* For purposes of § 1.167(n)–1 through § 1.167(n)–6, any amount paid or incurred after the income forecast

property is placed in service must be treated as a separate property if the cost is significant and gives rise to an increase in income that is significant and that was not included in either forecasted total income or revised forecasted total income in a prior taxable year.

(ii) *Exception for de minimis amounts.* For purposes of this paragraph, a cost that is less than the lesser of 5 percent of the depreciable basis (as of the date the amount is paid or incurred) of the income forecast property to which the amount relates or $100,000 is not significant. Such a cost is therefore not treated as separate property but is instead treated as a basis redetermination amount in accordance with § 1.167(n)–2(b).

(2) *Significant increase in income.* For purposes of this paragraph, whether an increase in income is significant is determined by comparing the amount that would be considered revised forecasted total income from the amounts treated as separate property to the most recent estimate of forecasted total income or revised forecasted total income used in calculating an allowance for depreciation with respect to the income forecast property.

(3) *Special rule for costs paid or incurred after the end of the final year.* For purposes of § 1.167(n)–1 through § 1.167(n)–6, any amount paid or incurred with respect to an income forecast property in a taxable year following the year in which the taxpayer claims a depreciation allowance in accordance with the final year depreciation rules of § 1.167(n)–4(d)(1) is treated as a basis redetermination amount under § 1.167(n)–2(b) provided the amount is not expected to give rise to a significant increase in current year income in any taxable year.

(4) *Time separate property is placed in service.* Separate property is treated as placed in service in the year the amount giving rise to the property is paid or incurred.

(5) *Examples.* The provisions of this paragraph (c) are illustrated in the following examples:

Example 1. G releases a film in 2001 and begins to recover the depreciable basis in the film using the income forecast method in the year 2001. In 2003, the film is re-edited and restored, and director's commentary is added in order to prepare the film for release on DVD. The total cost of preparing the film for the DVD release exceeds both 5 percent of the depreciable basis of the film and $100,000. *G* did not anticipate the income from the DVD market, and did not include any DVD release income in the income projections for the film in prior years. If *G* anticipates that the additional DVD release income will be significant in relation to the forecasted total income used in calculating an allowance for depreciation for 2002 (the previous taxable year), the additional amount gives rise to separate property and must be recovered over the forecasted total income from the DVD. If not, *G* must treat the additional amounts as additions to basis under § 1.167(n)–2(b).

Example 2. G releases a film in 2001 and recovers the depreciable basis in the film using the income forecast method in the years 2001 through 2011. In 2018, the film is re-edited and restored, and director's commentary is added in order to prepare the film for release on a newly discovered technology. If *G* anticipates that the additional new technology release income will be significant in relation to the revised forecasted total income used in calculating an allowance for depreciation for 2011 (the last taxable year for which an allowance was claimed), the cost of preparing the release gives rise to separate property and must be recovered over the forecasted total income from the new technology release. If not, *G* may deduct the cost in 2018, the year paid or incurred.

(d) *Aggregations treated as a single income forecast property.* Taxpayers must apply the income forecast method on a property-by-property basis, unless one of the aggregation rules provided in paragraphs (d)(1) through (4) of this section applies. If a taxpayer applies one of the aggregation rules provided in paragraphs (d)(1) through (4) of this section, costs incurred in taxable years after the initial income forecast property is placed in service are treated as basis redeterminations under § 1.167(n)–2; however, the additional allowance for depreciation provided in § 1.167(n)–4(c)(1) does not apply. The application of the provisions of paragraphs (d)(1) through (d)(4) is a method of accounting that may not be changed without the consent of the Commissioner. Permissible aggregations are limited to the following:

(1) *Multiple episodes of a television series produced in the same taxable year.* The producer of a television series may treat multiple episodes of a single television series produced in the same taxable year as a single unit of property for purposes of the income forecast method.

(2) *Multiple episodes of a television series produced in more than one taxable year.* The producer of a television series may treat multiple episodes of a single television series that are produced as a single season of episodes and placed in service over a period not in excess of twelve consecutive calendar months as a single unit of property for purposes of the income forecast method notwithstanding that the twelve-month period may span more than one taxable year.

(3) *Multiple interests acquired pursuant to a single contract.* Multiple interests in specifically identified income forecast properties acquired for broadcast pursuant to a single contract may be treated as a single unit of property for purposes of the income forecast method.

(4) *Videocassettes and DVDs.* The purchaser or licensee of videocassettes and DVDs for rental to the public may treat multiple copies of the same title purchased or licensed in the same taxable year as a single unit of property for purposes of the income forecast method.

§ 1.167(n)–6 Look-back method.

(a) *Application of the look-back method.* If a taxpayer claims a depreciation deduction under the income forecast method for any eligible income forecast property, such taxpayer is required to pay (or is entitled to receive) interest computed as described in this paragraph for any year to which the look-back method applies (a recomputation year). The look-back method generally must be applied when income forecast property is disposed of or ceases to generate income. Further, the look-back method generally applies in the 3rd and 10th taxable years following the year in which income forecast property is placed in service. Under the look-back method, taxpayers must pay interest on deductions accelerated by the underestimation of either forecasted total income or revised forecasted total income from income forecast property. Conversely, taxpayers are entitled to receive interest on deductions delayed by the overestimation of either forecasted total income or revised forecasted total income from income forecast property. If either forecasted total income or revised forecasted total income are overestimated or underestimated, interest may arise from basis redeterminations. The computation of adjusted tax liability as part of the look-back method is hypothetical; application of the look-back method does not require a taxpayer to adjust tax liability as reported on the taxpayer's tax returns, on an amended return, or as adjusted on examination for prior years.

(b) *Operation of the look-back method*—(1) *In general.* Under the look-back method, a taxpayer must perform a series of computations to determine look-back interest that the taxpayer is either required to pay or entitled to receive. As specified in paragraph (c) of this section, a taxpayer must first recompute depreciation allowances using revised forecasted total income rather than forecasted total income from

income forecast property for the recomputation year (as defined in paragraph (e) of this section) and each prior year. These recomputed depreciation amounts are then used to determine a hypothetical tax liability that would have arisen had the taxpayer used revised forecasted total income rather than forecasted total income in determining depreciation allowances. The hypothetical tax liability is compared to the taxpayer's prior tax liability and interest is calculated in accordance with paragraph (d) of this section on the resulting hypothetical overpayments or underpayments of tax for each year. Reporting requirements and special rules for the resulting amounts of interest are specified in paragraph (g) of this section.

(2) *Property-by-property application.* Except as provided in this section, the look-back method applies to each property for which the income forecast method is used. Aggregations properly treated as a single income forecast property pursuant to § 1.167(n)–5(d) are treated as a single property for purposes of applying the look-back method.

(c) *Recalculation of depreciation allowances*—(1) *Computation.* Under the look-back method, a taxpayer must compute the depreciation allowances for each income forecast property subject to the look-back method that would have been allowable under § 1.167(n)–1 through § 1.167(n)–5 for prior taxable years if the computation of the amounts so allowable had been made using revised forecasted total income as calculated at the end of the recomputation year.

(2) *Revised forecasted total income from the property*—(i) *In general.* Except as provided in this paragraph (c)(2), revised forecasted total income is determined in accordance with § 1.167(n)–3(c).

(ii) *Syndication income from television series.* Income excluded from forecasted total income (or, if appropriate revised forecasted total income) in any taxable year prior pursuant to § 1.167(n)–3(d)(2) is excluded from revised forecasted total income for purposes of this section for that year.

(iii) *Disposition of income forecast property.* For purposes of this section, income from the disposition of property must be taken into account in determining the amount of revised forecasted total income. Thus, when income forecast property is disposed of prior to the end of the 10th taxable year following the taxable year the property is placed in service, revised forecasted total income from the property for the year of disposition is deemed to be the sum of the amount realized on the disposition of the property plus all amounts included in current year income in the year of disposition and in taxable years prior to the year of disposition.

(3) *Special rule for basis redeterminations.* For purposes of the look-back calculation, any amount that is not treated as a separate property under § 1.167(n)–5(c) that is paid or incurred with respect to income forecast property after the property is placed in service is taken into account by discounting (using the Federal mid-term rate determined under section 1274(d) as of the time the cost is paid or incurred) the amount to its value as of the date the property is placed in service. The taxpayer may elect for the recomputation year with respect to any income forecast property to have the preceding sentence not apply to the property by taking the amount into account in the year that the amount was paid or incurred in the same manner as it was taken into account under § 1.167(n)–2.

(d) *Hypothetical overpayment or underpayment of tax*—(1) *In general*—(i) *Years for which a hypothetical overpayment or underpayment must be computed.* After recalculating depreciation allowances in accordance with paragraph (c) of this section, a taxpayer must calculate a hypothetical overpayment or underpayment of tax for each prior taxable year for which income tax liability is affected by the change in depreciation allowances. A redetermination of income tax liability is required for every tax year for which the income tax liability would have been affected by a change in the allowance for income forecast depreciation in any year. For example, if the change in depreciation allowance results in a net operating loss carryforward that affects income tax liability in a subsequent taxable year, income tax liability must be recomputed for such subsequent year.

(ii) *Methods of determining a hypothetical overpayment or underpayment.* Generally, the calculation of the hypothetical overpayment or underpayment of tax must be made under the method described in paragraph (d)(2) of this section. Certain taxpayers are required to use the simplified method contained in paragraph (d)(3) of this section.

(iii) *Cumulative determination of hypothetical income tax liability.* The redetermination of income tax liability in any prior taxable year for which income tax liability is affected by the change in depreciation allowances must take into account all previous applications of the look-back calculation. Thus, for example, in computing the amount of a hypothetical overpayment or underpayment of tax for a prior taxable year for which income tax liability is affected by the change in depreciation allowances, the hypothetical income tax liability is compared to the hypothetical income tax liability for that year determined as of the previous application of the look-back method.

(2) *Hypothetical overpayment or underpayment, actual recomputation*—(i) *Computation of change in income tax liability.* The hypothetical overpayment or underpayment is calculated first by redetermining the tax liability for each prior taxable year (either as originally reported, or as subsequently adjusted on examination or by amended return) using depreciation allowances calculated in paragraph (c) of this section for each prior taxable year in which depreciation allowances were determined under the income forecast method for the income forecast property (affected year). These recomputed depreciation allowances are then substituted for the depreciation allowances allowed (or allowable) for each affected year (whether originally reported, or as subsequently adjusted on examination or by amended return) and a revised taxable income is computed. A hypothetical income tax liability is then computed for each affected year using revised taxable income for that year. The hypothetical income tax liability for any affected year must be computed by taking into account all applicable additions to tax, credits, and net operating loss carrybacks and carryforwards. The tax, if any, imposed under section 55 (relating to alternative minimum tax) must be taken into account. Hypothetical income tax liability for each affected year is then compared to the tax liability determined as of the latest of the following dates—

(A) The original due date of the return (including extensions);

(B) The date of a subsequently amended or adjusted return; or

(C) The date of the previous application of the look-back method, in which case the hypothetical income tax liability for the affected year used in the most recent previous application of the look-back method (previous hypothetical tax liability) is used.

(ii) *Determination of interest.* Once the hypothetical overpayment or underpayment for each year is computed, the adjusted overpayment rate under section 460(b)(7), compounded daily, is applied to the overpayment or underpayment determined under paragraph (d)(2)(i) of

this section for the period beginning with the due date of the return (determined without regard to extensions) for the year in which either an overpayment or underpayment arises, and ending on the earlier of the due date of the return (determined without regard to extensions) for the redetermination year, or the first date by which both the income tax return for the filing year is filed and the tax for that year has been paid in full. The amounts of interest on overpayments are then netted against interest on underpayments to arrive at look-back interest that must be paid by the taxpayer or that the taxpayer is entitled to receive.

(iii) *Changes in the amount of a loss or credit carryback or carryforward.* If a recomputation of income forecast depreciation results in an increase or decrease to a net operating loss carryback (but not a carryforward), the interest a taxpayer is entitled to receive or required to pay must be computed on the decrease or increase in tax attributable to the change to the carryback only from the due date (not including extensions) of the return for the prior taxable year that generated the carryback and not from the due date of the return for the prior taxable year in which the carryback was absorbed. In the case of a change in the amount of a carryforward as a result of applying the look-back method, interest is computed from the due date of the return for the years in which the carryforward was absorbed.

(iv) *Changes in the amount of income tax liability that generated a subsequent refund.* If the hypothetical income tax liability for any affected year is less than the amount of the affected year tax liability (as reported on the taxpayer's original return, as subsequently adjusted on examination, as adjusted by amended return, or as redetermined by the last previous application of the look-back method), and any portion of the affected year tax liability was refunded as a result of a loss or credit carryback arising in a year subsequent to the affected year, the look-back method applies as follows to properly reflect the time period of the use of the tax overpayment. To the extent the amount of refund because of the carryback exceeds the hypothetical income tax liability for the affected year, the taxpayer is entitled to receive interest only until the due date (not including extensions) of the return for the year in which the carryback arose.

(v) *Example.* The provisions of this paragraph (d)(2) are illustrated by the following example:

Example. Upon the cessation of income from an income forecast property in 2003, the taxpayer computes a hypothetical income tax liability for 2001 under the look-back method. This computation results in a hypothetical income tax liability ($1,200x) that is less than the actual income tax liability the taxpayer originally reported ($1,500x). In addition, the taxpayer had already received a refund of some or all of the actual 2001 income tax liability by carrying back a net operating loss (NOL) that arose in 2002. The time period over which interest would be computed on the hypothetical overpayment of $300x for 2001 would depend on the amount of the refund generated by the carryback, as illustrated by the following three alternative situations:

(i) If the amount refunded because of the NOL is $1,500x, interest is credited to the taxpayer on the entire hypothetical overpayment of $300x from the due date of the 2001 return, when the hypothetical overpayment occurred, until the due date of the 2002 return, when the taxpayer received a refund for the entire amount of the 2001 tax, including the hypothetical overpayment.

(ii) If the amount refunded because of the NOL is $1,000x, interest is credited to the taxpayer on the entire amount of the hypothetical overpayment of $300x from the due date of the 2001 return, when the hypothetical overpayment occurred, until the due date of the 2003 return. In this situation interest is credited until the due date of the return for the recomputation year, rather than the due date of the return for the year in which the carryback arose, because the amount refunded was less than the hypothetical income tax liability of $1,200x. Therefore, no portion of the hypothetical overpayment is treated as having been refunded to the taxpayer before the recomputation year.

(iii) If the amount refunded because of the NOL is $1,300x, interest is credited to the taxpayer on $100x ($1,300x–$1,200x) from the due date of the 2001 return until the due date of the 2002 return because only this portion of the total hypothetical overpayment is treated as having been refunded to the taxpayer before the recomputation year. However, the taxpayer did not receive a refund for the remaining $200x of the overpayment at that time and, therefore, is credited with interest on $200x through the due date of the tax return for 2003, the recomputation year.

(3) *Hypothetical overpayment or underpayment, simplified method*—(i) *Introduction.* This paragraph provides a simplified method for calculating look-back interest. A pass-through entity that is not a closely held pass-through entity is required to apply the simplified method at the entity level with respect to income forecast property and the owners of the entity do not calculate look-back interest for the property. Under the simplified method, a taxpayer calculates the hypothetical underpayments or overpayments of tax for a prior year based on an assumed marginal tax rate.

(ii) *Operation of the simplified method.* Under the simplified method, depreciation allowances for income forecast property are first recomputed in accordance with the procedures contained in paragraph (c) of this section. These recomputed depreciation allowances are then compared with depreciation allowances allowed (or allowable) for each prior taxable year (whether originally reported, as subsequently adjusted on examination or by amended return, or as recomputed in the most recent previous application of the look-back method) to arrive at changes in depreciation allowances for the income forecast property. When multiple properties are subject to the look-back method in any given affected year, the changes in depreciation allowances attributable to each income forecast property determined in accordance with paragraph (c) of this section for each such year are cumulated or netted against one another to arrive at a net change in income forecast depreciation for purposes of computing the hypothetical overpayment or underpayment attributable to the year. The hypothetical underpayment or overpayment of tax for each affected year is then determined by multiplying the applicable regular tax rate (as defined in paragraph (d)(3)(iv) of this section) by the increase or decrease in depreciation allowances.

(iii) *Determination of interest.* Interest is credited to the taxpayer on the net overpayment and is charged to the taxpayer on the net underpayment for each affected year by applying the adjusted overpayment rate under section 460(b)(7), compounded daily, to the overpayment or underpayment determined under paragraph (d)(3)(ii) of this section for the period beginning with the due date of the return (determined without regard to extensions) for the affected year, and ending on the earlier of the due date of the return (determined without regard to extensions) for the recomputation year, or the first date by which both the income tax return for the recomputation year is filed and the tax for that year has been paid in full. The resulting amounts of interest are then netted to arrive at look-back interest that must be paid by the taxpayer or that the taxpayer is entitled to receive.

(iv) *Applicable tax rate.* For purposes of determining hypothetical underpayments or overpayments of tax under the simplified method, the applicable regular rate is generally the highest rate of tax in effect for corporations under section 11. However, the applicable regular tax rate is the

highest rate of tax imposed on individuals under section 1 if, at all times during all affected years, more than 50 percent of the interests in the entity were held by individuals directly or through 1 or more pass-through entities. The highest rate of tax imposed on individuals is determined without regard to any additional tax imposed for the purpose of phasing out multiple tax brackets or exemptions.

(4) *Definitions*—(i) *Pass-through entity.* For purposes of this section, a pass-through entity is either a partnership, an S corporation, an estate or a trust.

(ii) *Closely-held pass-through entity.* A closely-held pass-through entity is a pass-through entity that, at any time during any year for which allowances for depreciation are recomputed, 50 percent or more (by value) of the beneficial interests in that entity are held (directly or indirectly) by or for 5 or fewer persons. For this purpose, the term *person* has the same meaning as in section 7701(a)(1), except that a pass-through entity is not treated as a person. In addition, the constructive ownership rules of section 1563(e) apply by substituting the term *beneficial interest* for the term *stock* and by substituting the term *pass-through entity* for the term *corporation* used in that section, as appropriate, for purposes of determining whether a beneficial interest in a pass-through entity is indirectly owned by any person.

(e) *Recomputation year*—(1) *In general.* Except as provided in this paragraph (e), the term recomputation year means, with respect to any income forecast property—

(i) The earlier of—

(A) The year the income from the income forecast property ceases with respect to the taxpayer (and with respect to any person who would be treated as a single taxpayer with the taxpayer under rules similar to those in section 41(f)(1)); or

(B) The 3rd taxable year beginning after the taxable year in which the income forecast property was placed in service; and

(ii) The earlier of—

(A) The year the income from the income forecast property ceases with respect to the taxpayer (and with respect to any person who would be treated as a single taxpayer with the taxpayer under rules similar to those in section 41(f)(1)); or

(B) The 10th taxable year following the taxable year the income forecast property is placed in service.

(2) *Look-back method inapplicable in certain de minimis cases*—(i) *De minimis difference between actual and forecasted income.* A taxable year described in paragraph (e)(1) of this section is not a recomputation year if forecasted total income (as defined in § 1.167(n)–3(b)) or, where applicable, revised forecasted total income (as defined in § 1.167(n)–3(c)), for each preceding taxable years is—

(A) Greater than 90 percent of revised forecasted total income for the taxable year that would otherwise be a recomputation year; and

(B) Less than 110 percent of revised forecasted total income for the taxable year that would otherwise be a recomputation year.

(ii) *Application of the de minimis rule where the look-back method was previously applied.* For purposes of applying paragraph (e)(2)(i) of this section in any taxable year after a taxable year in which the look-back method has previously been applied, revised forecasted total income for the year the look-back method was applied, forecasted total income for the year the income forecast property was placed in service, and revised forecasted total income for all taxable years preceding the taxable year in which the look-back method was previously applied are deemed to be equal to the amount of revised forecasted total income that was used for purposes of applying the look-back method in the most recent taxable year for which the look-back method was applied.

(f) *De minimis basis exception.* The look-back method does not apply to any income forecast property with an adjusted basis, determined in accordance with section 1011 but without regard to the adjustments described in section 1016(a)(2) and (3), as of the close of any year that would otherwise be a recomputation year of $100,000 or less.

(g) *Treatment of look-back interest*—(1) *In general.* The amount of interest a taxpayer is required to pay is treated as an income tax under Subtitle A of the Internal Revenue Code, but only for purposes of Subtitle F of the Internal Revenue Code (other than sections 6654 and 6655), which addresses tax procedure and administration. Thus, a taxpayer that fails to report look-back interest when due is subject to any penalties under Subtitle F of the Internal Revenue Code applicable to a failure to report and pay a tax liability. However, look-back interest to be paid is treated as interest arising from an underpayment of tax under Subtitle A of the Internal Revenue Code, even though it is treated as an income tax liability for penalty purposes. Thus, look-back interest required to be paid by an individual, or by a pass-through entity on behalf of an individual owner (or beneficiary) under the simplified method, is personal interest and, therefore, is not deductible in accordance with § 1.163–9T(b)(2). Interest received under the look-back method is treated as taxable interest income for all purposes, and is not treated as a reduction in tax liability. The determination of whether interest computed under the look-back method is treated as income tax under Subtitle A of the Internal Revenue Code is determined on a net basis for each recomputation year. Thus, if a taxpayer computes both hypothetical overpayments of tax and hypothetical underpayments of tax for years prior to any given recomputation year, the taxpayer has an increase in tax only if the total interest computed on underpayments for all prior taxable years for which income tax liability is affected by the application of the look-back method exceeds the total interest computed on overpayments for such years, taking into account all income forecast property for which the look-back method is required. Interest determined at the entity level under the simplified method is allocated among the owners (or beneficiaries) for reporting purposes in the same manner that interest income and interest expense are allocated to owners (or beneficiaries) and subject to the allocation rules applicable to such entities.

(2) *Additional interest due on interest only after tax liability due.* For each recomputation year, taxpayers are required to file a Form 8866, ''Interest Computation Under the Look-back Method for Property Depreciated Under the Income Forecast Method,'' at the time the return for that recomputation year is filed to report the interest a taxpayer is required to pay or entitled to receive under the look-back method. Even if the taxpayer has received an extension to file its income tax return for the recomputation year, look-back interest is computed with respect to the hypothetical increase (or decrease) in the tax liability determined under the look-back method only until the initial due date of that return (without regard to the extension). Interest is charged, unless the taxpayer otherwise has a refund that fully offsets the amount of interest due, (or credited) with respect to the amount of look-back interest due (or to be refunded) under the look-back method from the initial due date of the return through the date the return is filed. No interest is charged (or credited) after the due date of the return with respect to the amount of the

hypothetical increases (or decreases) in tax liability determined under the look-back method.

(3) *Timing of look-back interest.* For purposes of determining taxable income under Subtitle A of the Internal Revenue Code, any amount refunded to the taxpayer as a result of the application of the look-back method is includible in gross income in accordance with the taxpayer's method of accounting for interest income. Any amount required to be paid is taken into account as interest expense arising from an underpayment of income tax in the tax year it is properly taken into account under the taxpayer's method of accounting for interest expense.

(4) *Statute of limitations; compounding of interest on look-back interest.* For guidance on the statute of limitations applicable to the assessment and collection of look-back interest owed by a taxpayer, see sections 6501 and 6502. A taxpayer's claim for credit or refund of look-back interest *previously paid by or collected from a taxpayer* is a claim for credit or refund of an overpayment of tax and is subject to the statute of limitations provided in section 6511. A taxpayer's claim for look-back interest (or interest payable on look-back interest) that is not attributable to an amount previously paid or collected from a taxpayer is a general claim against the federal government. For guidance on the statute of limitations that applies to general claims against the federal government, see 28 U.S.C. 2401 and 2501. For guidance applicable to the compounding of interest when the look-back interest is not paid, see sections 6601 to 6622.

(h) *Example.* The provisions of this section are illustrated by the following example:

Example. (i) *H*, a calendar year corporation, creates a motion picture at a cost of $60x. *H* completes the motion picture in 2001 and begins exhibition of the film that same year. Assume that $60x is greater than $100,000. In 2001, *H* anticipates that it will earn $200x from the motion picture (net of distribution costs). *H* therefore uses this amount as Forecasted Total Income when computing depreciation allowances for the motion picture.

(ii) *H* earns current year income of $80x in 2001, $60x in 2002, and $40x in 2003. During the period from 2001 to 2004, one of the actors who appeared in *H*'s film became more popular, and this increase in the actor's popularity increased the demand for *H*'s film. In 2004, therefore, *H* revised its forecast of income from the film upward to $240x. *H* earns $20x in 2004 from the motion picture and $10x in 2005.

(iii) Based on these facts, *H*'s allowances for depreciation for the motion picture for 2001 would be $24x, computed by multiplying the depreciable basis of the motion picture of $60x by current year income of $80x divided by forecasted total income of $200x under § 1.167(n)-4(a). Similarly, *H*'s allowances for depreciation for the motion picture for 2002 would be $18x, computed by multiplying the depreciable basis of the motion picture of $60x by current year income of $60x divided by forecasted total income of $200x, and *H*'s allowances for depreciation for the motion picture for 2003 would be $12x, computed by multiplying the depreciable basis of the motion picture of $60x by current year income of $40x divided by forecasted total income of $200x.

(iv) In 2004, *H* determines revised forecasted total income of $240x in accordance with § 1.167(n)-3(c). Because revised forecasted total income in 2004 of $240x is greater than 110 percent of forecasted total income used in computing the allowance for depreciation in the immediately preceding year (110 percent of $200x equals $220x), *H* is required under § 1.167(n)-4(b)(2) to compute the allowance for depreciation in 2004 and thereafter using the revised computation. *H* first computes its unrecovered depreciable basis in the motion picture under § 1.167(n)-2(c) of $6x by subtracting from the depreciable basis of $60x the depreciation allowances for 2001, 2002, and 2003 of $24x, $18x, and $12x. *H* then multiplies the unrecovered depreciable basis of $6x by the current year income for 2004 of $20x divided by $60x (revised forecasted total income $240x less current year income for all years prior to 2004 ($80x + $60x + $40x or $180x), resulting in a depreciation allowance for 2004 of $2x.

(v) In 2005, *H* is required to use the revised computation because *H* used it in 2004. Thus, *H* multiplies the unrecovered depreciable basis of $6x times current year income for 2005 of $10x divided by $60x (revised forecasted total income as computed in 2004), resulting in a depreciation allowance for 2005 of $1x.

(vi) Thus, *H*'s allowances for depreciation may be summarized as follows:

Year	Current year income	Forecasted total income	Revised forecasted total income	Depreciable basis	Unrecovered depreciable basis	Depreciation allowance
2001	80x	200x	.....	60x	.....	24x
2002	60x	200x	.....	60x	.....	18x
2003	40x	200x	.....	60x	.....	12x
2004	20x	.....	240x	.....	6x	2x
2005	10x	.....	240x	.....	6x	1x

(vii) Under paragraph (e)(1)(i)(B) of this section, 2004 is a recomputation year (because 2004 is the third taxable year after the year in which the motion picture was placed in service) unless a de minimis rule applies. The de minimis rule in paragraph (e)(2) of this section does not apply in 2004 because forecasted total income of $200x used in the computation of income forecast depreciation in 2001, 2002 and 2003 is not greater than 90 percent of year 2004 revised forecasted total income of $240x (90 percent of $240x = $216x). Thus, *H* must apply the look-back method for 2004.

(viii) If *H* sells the motion picture in 2006 for $25x prior to earning any current year income from the motion picture, *H* would not be entitled to any allowance for depreciation in 2006. (The special rule of § 1.167(n)-3(d)(1) precludes *H* from including income from the sale of the motion picture in current year income, *H* has no other current year income, and § 1.167(n)-4(d)(3) precludes the use of the final year depreciation rule of § 1.167(n)-4(d)(1).) Under paragraph (e)(1)(ii)(A) of this section, 2006 is a recomputation year (because in 2006 the income from the property to *H* ceases) unless a de minimis rule applies.

(ix) To determine whether the de minimis rule applies, *H* is required to determine revised forecasted total income for 2006. Under paragraph (c)(2) of this section, revised forecasted total income for 2006 is deemed to be the sum of current year income for the years 2001–2006 of $210x ($80x + $60x + $40x + $20x + $10x + $0x) plus the amount realized from the sale of the motion picture of $25x or $235x. Revised forecasted total income for 2005 is $240x, and pursuant to paragraph (e)(2)(ii) of this section, revised forecasted total income for the years 2001–2004 is deemed (for purposes of determining whether 2006 is a recomputation year) to be the amount of revised forecasted total income used in the 2004 application of the look-back method of $240x. Because $240x is greater than $212x (90 percent of $235x) and less than $259x (110 percent of $235x), the de minimis rule applies and *H* is not required to apply the look-back method in 2006.

§ 1.167(n)–7 Effective date.

The regulations under § 1.167(n)-1 through § 1.167(n)-6 are applicable for property placed in service on or after

the date that final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–122564–02]

RIN 1545–BA73

Carryback of Consolidated Net Operating Losses to Separate Return Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 that affect corporations filing consolidated returns. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations permitting certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by July 30, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, Room 5226 (REG–122564–02), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU, Room 5226 (REG–122564–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Marie C. Milnes-Vasquez (202) 622–7770; concerning submissions and/or requests for a public hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by July 30, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.1502–21(b)(3)(ii)(C). This information is required to document the taxpayer's election to relinquish portions of its carryback period for 2001 and 2002 losses attributable to acquired members. The data will be used by the Internal Revenue Service to ensure that taxpayers are preparing their returns in accordance with their elections. The collection of information is required to obtain a benefit. The likely respondents are businesses.

Estimated total annual reporting burden: 1,000 hours.

Estimated average annual burden hours per respondent: 15 minutes.

Estimated number of respondents: 4,000.

Estimated annual frequency of responses: Once.

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 control number assigned by the Office of Management and Budget.

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.

Background and Explanation

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules permitting certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect persons filing consolidated Federal income tax returns. Available data indicates that most consolidated return filers are large companies (not small businesses). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public

hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Marie C. Milnes-Vasquez, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1502–21 is amended by adding paragraph (b)(3)(ii)(C) to read as follows:

§ 1.1502–21 Net operating losses.

[The text of proposed § 1.1502–21(b)(3)(ii)(c) is the same as the text of § 1.1502–21T(b)(3)(ii)(c) published elsewhere in this issue of the **Federal Register**].

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–13577 Filed 5–30–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–102305–02]

RIN 1545–BA52

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains proposed amendments to temporary regulations issued under sections 337(d) and 1502. The amendments clarify certain aspects of the temporary regulations relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group. The proposed amendments in these proposed regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these regulations.

DATES: Written or electronic comments must be received by July 10, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 17, 2002, at 10 a.m., must be received by June 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–102740–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 6 p.m. to CC:ITA:RU (REG–102740–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the Internal Revenue Service Auditorium, in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean P. Duffley, (202) 622–7530, or Lola L. Johnson, (202) 622–7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been previously reviewed and approved by the Office of Management and Budget under control number 1545–1774. No material changes to these collections of information are proposed in these regulations.

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 control number assigned by the Office of Management and Budget.

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.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to sections 337(d) and 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 17, 2002, at 10 a.m., in the IRS Auditorium, IRS Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 30 minutes before the hearing starts.

Drafting Information

The principal authors of these regulations are Sean P. Duffley and Lola

L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for ''Section 1.1502–20T(i)'' and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–20 also issued under the authority of 26 U.S.C. 337(d) and 1502. * * *

Par. 2. In § 1.337(d)–2, paragraphs (a)(4) and (b)(4) are added to read as follows:

§ 1.337(d)–2 Loss limitation window period.

[The text of this proposed section is the same as the text of § 1.337(d)–2T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1502–20 is amended by revising paragraphs (i)(3)(v) and (i)(4) to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

[The text of this proposed section is the same as the text of § 1.1502–20T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–13575 Filed 5–30–02; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Proposed Changes to the Move Update and Address Matching Requirements

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: The Postal Service requests comments from the mailing industry on several proposals to reduce the volume of undeliverable-as-addressed (UAA) mail. The Postal Service intends to extend the Move Update requirement for presorted rate mailings beyond First-Class Mail to also include Periodicals, Standard Mail, and Package Services; to decrease from 180 days to 90 days the window a mailer has to process addresses through a USPS-approved Move Update process prior to the mailing date; and to remove manual notifications from ancillary service endorsements as a stand-alone option to satisfy the Move Update requirement. Also being considered is a requirement for more frequent use of address matching software and a requirement for that software to utilize more current address matching directories. The Postal Service is not proposing any immediate changes to the Domestic Mail Manual (DMM) or the elimination of manual ancillary service endorsements for single-piece rated mail. The Postal Service will give due notice of these changes with an intended implementation date of no sooner than 18 months from the publication of this notice.

DATES: Comments must be received on or before August 29, 2002.

ADDRESSES: Written comments should be delivered to the Office of Product Management—Addressing, National Customer Support Center, United States Postal Service, 6060 Primacy Pkwy, Ste. 201, Memphis, TN 38188–0001. Comments may be transmitted via facsimile to 901–821–6206 or via e-mail to *chunt1@email.usps.gov*. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Orbke, 901–681–4658; or Charles B. Hunt, 901–681–4651.

SUPPLEMENTARY INFORMATION: On October 15, 2001, the Mailing Industry Task Force, a joint workgroup of mailing industry and Postal Service leaders, released its findings and recommendations in the report Seizing Opportunity (this report can be viewed at *www.usps.com/strategicdirection/mitf.htm*). To help drive costs out of the postal delivery system and to reduce the volume of UAA mail, the Task Force recommended that mailer requirements be revised to facilitate more frequent use of Move Update and address matching software.

It is the intent of the Postal Service to implement the proposals contained in this notice as part of the Product Redesign effort that is currently under way. Product Redesign is a joint mailing industry and Postal Service initiative to evaluate and implement ideas that improve the overall value of the mail. Product Redesign has also focused on these same address quality initiatives with a goal of creating incentives for mailers to take steps to reduce the costs associated with UAA mail. The value of these proposals to both the mailing industry and the Postal Service is clearly recognized. In addition to the direct UAA mail impact on postage rates, the mailing industry incurs substantial indirect costs associated with wasted mail production, additional labor required to handle manual corrections, and lost business opportunities when their strategic messages cannot be delivered. Implementation of these ''Best Practices'' addressing proposals will benefit both the mailing industry and the Postal Service by substantially mitigating the impact of UAA mail and enhancing the value and viability of the mail as a communications medium of choice.

(1) Move Update Requirement for All Classes of Mail

UAA mail is a persistent problem for both the mailing industry and the Postal Service. In testimony presented before the Postal Rate Commission during omnibus rate case Docket No. R–2001–1, USPS costs associated with UAA mail in fiscal year 2000 were $1.8 billion. UAA volume for that year totaled 5.7 billion pieces. By comparison, a 1998 Postal Service study of the UAA problem commissioned through Price Waterhouse revealed UAA costs for fiscal year 1998 were $1.5 billion and its associated volume was 5.4 billion pieces. Overall UAA volume has grown by 5.26% in two years.

When UAA volume was tracked through the Computerized Forwarding System (CFS) sites by class of mail, it was noted that First-Class Mail UAA volume actually decreased from 1998 to 2000 by 0.29%, while UAA volume for all other classes increased. First-Class Mail is the only class currently with a Move Update requirement for presort and automation postage rates. Clearly the Move Update requirement is working to contain the growth of UAA within First-Class Mail. The 1998 Price Waterhouse study also revealed that if it were not for the change of address programs, such as National Change of Address (NCOA), Address Change Service (ACS), and FASTforward®, UAA costs would have been over $3 billion.

If the Move Update requirement was expanded to other classes of mail, the Postal Service and the mailing industry could realize even greater cost savings. These savings may help to contribute to rate stabilization and improved delivery service.

(2) Frequency of Use of Move Update Processing

Currently the DMM requires that addresses on all Presorted and automation rate First-Class Mail be updated within 180 days before the mailing date using an USPS-approved method (i.e., NCOA, ACS, FASTforward®, an ancillary service endorsement, or other methods approved by the National Customer Support Center). It is proposed that this 180-day window be reduced to 90 days and linked to the previous proposal of expanding the Move Update requirement to the other classes of mail.

Approximately 17% of all Americans move every year. In Fiscal Year 2000, families and individuals filed over 41 million change-of-address orders. In the same year, there were 2.6 million business filings. With such a dynamic environment, managing addresses affected by customer moves is challenging. The monthly rate of deterioration of address currency, due to family and individual moves alone, is approximately 1.4%. In 6 months (the current Move Update requirement), about 8.4% of addresses in the mailer's files has the potential to be inaccurate. To minimize this natural deterioration, the Postal Service has recommended, since the inception of the Move Update requirement in July 1997, that Move Update processing be completed as close to the mailing date as possible. While this is desirable, the Postal Service understands that it may not always be possible for the mailer. However, it is in the best interests of both the mailing industry and the Postal Service to require Move Update processing at most 90 days before the mailing date. Reducing by one-half the natural deterioration of address currency can be expected to significantly decrease UAA volume and the costs associated with the re-handling and redirection of mail.

(3) Removal of Manual Hardcopy Notifications as a Move Update Option

The Postal Service is proposing the elimination of manual notifications resulting from ancillary service endorsements, as a method to meet the Move Update requirement. There are currently six USPS-approved methods to meet the Move Update requirement. They are: (1) NCOA, (2) FASTforward®, (3) ACS, (4) an appropriate ancillary service endorsement, (5) the NCSC-approved alternate method for mailers that have statutory or regulatory restrictions that prohibit changing customer addresses without direct notification from the addressee, and (6) the NCSC-approved alternative for mailers' processes that effectively produces a Move Update accuracy of at least 99% as measured against the Postal Service's Change-of-Address (COA) systems.

NCOA and FASTforward® are processes that occur before or at the time of mailing and are known as pre-mailing methods. ACS and use of ancillary service endorsements are Move Update methods that are post-mailing in nature. The two alternative methods may be pre-or post-mailing processes. With the exception of ancillary service endorsements that require manually produced address notices, all of the current options would remain available to mailers for Move Update qualification.

Providing mailers with manually prepared address notifications is the least effective and most costly Move Update method for the Postal Service requiring high cost carrier and clerk labor. For mailers, the higher fee per notice (currently $0.60 versus $0.20 for ACS electronic notifications) must be added to their high labor costs associated with manually processing and incorporating the COA information into their address files. These costs often far exceed the fee for the address correction notice. This will be further impacted when the manual notification fee increases from $0.60 to $0.70 when the rate case Docket No. R2001–1 is implemented. The ACS fee will remain at $0.20.

When one considers the impact on both the Postal Service and the mailing industry of these inherent problems related to cost, quality, and timeliness of manual updates, it does not make sense to continue to allow manual address notifications as a method for obtaining automation and presorted rate discounts. Another point to consider is the fact that many of these endorsements require the Postal Service to return the mailpiece to the mailer at a significant cost. There is a viable cost-effective replacement available for mailers who cannot process electronic address corrections and must use hardcopy. This replacement method is the electronic ACS hardcopy option that provides a computer-formatted, high quality printout in a timely manner at a reasonable cost to the Postal Service and the mailer. The current fee is $0.20, the same as the cost for ACS electronic notification. No additional carrier or clerk labor is required to prepare the ACS channel hardcopy address corrections. This option requires minimal initial cost for a mailer to implement.

(4) Frequency of Use of Address Matching Software

Currently the DMM requires that addresses on all non-carrier route automation rate mailings (First-Class Mail, Periodicals, and Standard Mail) must be ZIP+4 coded within 180 days before the mailing date. The mailer must use current Coding Accuracy Support System (CASS)-certified address matching software and the current USPS Address Information System (AIS) directory. It is proposed that this 180-day window be reduced to 90 days. Starting June 30, 2002 (R2001–1), the Postal Service will require a delivery point barcode (DPBC) on all Enhanced Carrier Route (ECR) high density and saturation rate pieces claimed at letter rates, in addition to the carrier route coding. Carrier route coding is already required within 90-days of mailing.

Today, the Postal Service is delivering mail to over 137 million delivery points. Each year, on average, 2.8 million new delivery points are added and 1.1 million are deleted, and approximately 6.5 million change transactions are processed (changes to the ZIP+4 code, carrier route number, or address elements). The total average number of changes to delivery points and ZIP+4 range-based records is 10.4 million per year. These address element and Postal Code changes that affect mail deliverability are distinct from, and in addition to, the COA orders filed each year by families, individuals, and businesses.

Edits to the Address Management System (AMS) result in a 26.6% annual change rate, which translates to 2.22% of the records changed per month. It is a daunting challenge to keep addresses current with the proper ZIP+4 codes and carrier route number in such a dynamic environment.

By going from a 180-day to a 90-day matching and coding requirement to obtain automation rate discounts, we would potentially reduce by half (from approximately 13.3% to 6.65%) the number of mailpieces containing inaccurate address coding.

(5) Address Matching Directory Update Frequency

When processing address files through CASS-certified address matching software, the system must use the ''current USPS database/directory'' to obtain the correct ZIP+4 codes. The update standards in DMM A950.3.0 define a ''current USPS database'' by the following matrix:

CURRENT DMM STANDARDS

File Release Date Use of file released on . . .	Required Use Date Must begin no later than . . .	Last Permissible Use Date And must end no later than . . .
February 15	April 1	May 31.
April 15	June 1	July 31.
June 15	August 1	September 30.
August 15	October 1	November 30.
October 15	December 1	January 31.
December 15	February 1	March 31.

PROPOSED DMM STANDARDS

File Release Date Use of file released on . . .	Required Use Date Must begin no later than . . .	Last Permissible Use Date And must end no later than . . .
January 15	March 1	March 31.
February 15	April 1	April 30.
March 15	May 1	May 31.
April 15	June 1	June 30.
May 15	July 1	July 31.
June 15	August 1	August 31.
July 15	September 1	September 30.
August 15	October 1	October 31.
September 15.	November 1	November 30.
October 15	December 1	December 31.
November 15	January 1	January 31.
December 15	February 1	February 28.

New AIS product releases must be included in address matching systems no later than 45 days after the release date. Mailers are expected to update their systems with the latest data files as soon as practicable. This provides mailers a maximum of 105 days for product release use (45 days for installation and testing, and 60 days of use thereafter) as noted in the above table. This built-in overlap in dates for product use allows mailers adequate time to install the new data files and test their systems.

The Postal Service is proposing the reduction of these timeframes for permissible use of any product release from 60 days to 30 days. The 45-day allowance for installation and testing remains unchanged. As a result, mailers would have a maximum of 75 days for AIS product release use (45 days for installation and testing, and 30 days of use thereafter). Therefore, the new USPS database/directory product cycle would be as follows:

As stated in the previous section, over 26.6% of the Postal Service's AMS database experiences some change over the course of a year. The required use of monthly instead of bi-monthly directories may help to further reduce UAA mail caused by inaccurate address coding by another 2.22%.

This proposal to use monthly directories coupled with the proposal for more frequent address coding are inextricably linked and must be considered as an integrated two-part solution to reduce UAA mail that results from poor physical address quality. More frequent coding against old database directories or less frequent coding against newer database directories adds no real value. It is the combination of the two that is expected to provide an increase in the accuracy of address information on mailpieces.

Consider an illustrative automation rate mailing submitted on November 30 as the most extreme example of the results of using current standards. The addresses within the mailing were ZIP+4 coded on the last permissible day of May 31 using the oldest ''current'' ZIP+4 file of February 15. The AMS data source that was used to process the mailer's addresses is over nine months old. When factored against the 2.22% monthly AMS change rate, approximately 19.98% (9 months x 2.22%) of the mailpieces within the mailing may potentially contain the wrong ZIP+4 code and therefore the wrong POSTNET barcode.

Under this proposal, using the same extreme example, the automation rate mailing is submitted on November 30. The addresses within the mailing were ZIP+4 coded on the last permissible day that is now August 31 using the oldest ''current'' ZIP+4 file of June 15. The AMS data source that was used to process the mailer's addresses is now only five months old. Again when factored against the 2.22% monthly AMS change rate, only 11.1% (5 months x 2.22%) of the mailpieces may potentially contain the wrong ZIP+4 code.

	Current Standards	Proposed Standards
Date of Mailing	November 30	November 30.
Oldest Permissible Date Address List was Matched & Coded	May 31	August 31.
Oldest Date of Valid AIS Directory Used for Matching & Coding	February 15	June 15.
Age of Addressing Data Used for Matching & Coding	9 Months	5 Months.
Percentage of Addressing File Containing Potentially Incorrect ZIP+4 codes	19.98%	11.1%.

The proposed standards would significantly reduce the number of mailpieces with potentially inaccurate ZIP+4 codes that would have to be redirected. This combined approach should decrease the volume of UAA mail within the postal delivery system and thereby reduce the total costs associated with UAA mail.

For the reasons stated above, the Postal Service seeks comments on the impact of strengthening address quality standards in the mutual pursuit of reducing UAA costs and enhancing delivery service standards. In particular, the Postal Service seeks comments on the intended implementation time of not less than 18 months; the extension of the Move Update requirement for presorted rate mailings to Periodicals, Standard Mail, and Package Services mailers; the impact to mailers who currently use manual ancillary service endorsements as an option to satisfy the Move Update requirement; and the impact of more frequent use of Move Update and address matching software.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–13712 Filed 5–30–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN141–1b; FRL–7213–6]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on July 18, 2000 with additional material submitted on January 11, 2002 and March 13, 2002. The revised SIP pertains to vapor tightness standards for the loading of gasoline cargo tanks at bulk gasoline terminals and pipeline breakout stations in Indiana. The purpose of this action is to approve amendments to Indiana's gasoline transport testing requirements which will tighten current state rules. In the Final Rules section of this **Federal Register**, EPA is approving as described herein, the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further action in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on this proposed rule by July 1, 2002.

ADDRESSES: You should mail written comments to: Patricia Morris, Acting Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

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

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

In this action, we are proposing to approve changes to Indiana's gasoline transport testing requirements contained in 326 IAC 8–4 and 326 IAC 20–10. Our approval makes the changes to the Indiana rules part of the federally enforceable SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: May 9, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–13517 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0003–P]

RIN 0938–AK64

Health Insurance Reform: Modifications to Standards for Electronic Transactions and Code Sets

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adopt modifications to certain standards for retail pharmacy transactions adopted in our regulations entitled ''Health Insurance Reform: Standards for Electronic Transactions'' published in the **Federal Register** on August 17, 2000 (65 FR 50312), which implemented some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996. This rule proposes to adopt the National Council for Prescription Drug Programs (NCPDP) Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record, in place of NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 0 (Version 1.0), February 1996, for the following standards for retail pharmacy transactions: health care claims or equivalent encounter information; eligibility for a health plan; and coordination of benefits.

Additionally, we propose to modify the standard for the health care payment and remittance advice transaction as the standard for retail pharmacy transactions by adopting, in place of the current standard, the ASC X12N 835—health care claim payment/advice. We also propose to adopt the NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record, as the referral certification and authorization transaction standard, to replace the current standard, ASC X12N 278, for retail pharmacy transactions only.

This rule also proposes to repeal the adoption of National Drug Codes as the standard medical data code set for reporting drugs and biologics in all standard transactions, except those for retail pharmacy transactions, for which standards have been adopted.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 1, 2002.

ADDRESSES: In commenting, please refer to file code CMS–0003–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0003–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Comments may also be submitted electronically to the following e-mail address: CMS0003@cms.hhs.gov. For e-mail procedures, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marilyn Abramovitz, (410) 786–5939 and Gladys Wheeler, (410) 786–0273.

SUPPLEMENTARY INFORMATION:

Public Comments: Normally, we provide a 60-day public comment period for a proposed rule; for this rule, however, there is a 30-day comment period. After publication of the Standards for Electronic Transactions final rule (65 FR 50312), we received an overwhelming response from the affected industry and industry representatives requesting that we make the changes proposed in this rule. Because this proposed rule is in direct response to those industry requests, we believe it is unnecessary to provide more than a 30-day comment period for this rule.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–17, at the headquarters Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 4 p.m. To make an appointment to view the public comments, please call telephone number (410) 786–9994.

Electronic Comments: We will consider all electronic comments that include the full name, postal address, and affiliation (if applicable) of the sender and are submitted to the electronic address identified in the **ADDRESSES** section of this preamble. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at 7500 Security Boulevard, Baltimore, MD 21244.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

On August 17, 2000, we published the Standards for Electronic Transactions final rule in the **Federal Register** (65 FR 50312). That regulation implemented some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It adopted standards, in 45 CFR part 162, for eight electronic transactions and for code sets to be used in those transactions. It also contained requirements concerning the use of these standards by health plans, health care clearinghouses, and certain health care providers. (Please refer to that rule for a detailed discussion of electronic data interchange, the statutory background, and an analysis of the public comments received during the promulgation of the rule.) The compliance dates set forth in the rule are October 16, 2002 for all covered entities, with the exception of small health plans, for which the compliance date is October 16, 2003.

A. The Standards for Retail Pharmacy

The Standards for Electronic Transactions final rule (65 FR 50312), published on August 17, 2000, adopted transaction standards for eight different transactions, some of which are transactions for retail pharmacy. In this section of the proposed rule, we address only those retail pharmacy transaction standards that would be affected by the modifications proposed herein. The standards adopted in the final rule for retail pharmacy transactions for health care claim status, enrollment and disenrollment in a health plan, and health plan premium payments, would not be affected by the changes proposed in this rule. The August 17, 2000 final rule adopted the National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 0 (Version 1.0), February 1, 1996, as the standards for the retail pharmacy sector for the following transactions: health care claims or equivalent encounter information, eligibility for a health plan, health care payment and remittance advice, and coordination of benefits. The rule also adopted the ASC X12 N278 Request for Review and Response as the standard for the referral certification and authorization transaction to be used for retail pharmacy transactions.

B. The Standard Medical Data Code Set for Drugs and Biologics

In the Standards for Electronic Transactions proposed rule (65 FR 25285), we proposed the adoption of National Drug Codes (NDC), as maintained and distributed by HHS in collaboration with drug manufacturers for reporting drugs and biologics, as the standard medical data code set for reporting drugs and biologics in standard transactions. We addressed comments on that proposal in the August 17, 2000 final rule. See 65 FR 50328 for a detailed discussion of the comments and responses. Generally, NDC were favored by commenters as the most appropriate and efficient coding system available for identifying drugs. In the final rule, we adopted NDC as the medical data code set for reporting drugs and biologics in standard transactions. The decision to adopt NDC, rather than another code set such as HCPCS drug codes as the standard medical data code set for reporting drugs and biologics was based upon the following factors:

- NDC have several significant advantages over other formats we considered. The NDC is a unique number that is capable of identifying each drug or biological product. The Food and Drug Administration (FDA) and drug manufacturers assign NDC to approved drugs. The NDC format is an 11-digit number that specifies detailed information about each drug. The first grouping of five numbers represents a labeler code that identifies a drug manufacturer and is assigned by the FDA. The second grouping of four numbers is the product code, which identifies drug strength, dosage form, and formulation, and is assigned by the drug manufacturer. The third grouping of two numbers represents package size and uniquely identifies the package by the quantity of contents and type of package, and is assigned by the drug manufacturer.

• NDC are an existing code set already in moderate use for reporting drugs and biologics by some entities, and in widespread use by retail pharmacies.

• The adoption of NDC as the standard coding system for reporting drugs and biologics on standard transactions would reduce the need for local codes since NDC are assigned on a continuous basis.

II. Provisions of the Proposed Regulations

A. Modification of Standards for Retail Pharmacies

1. Retail Pharmacy Batch Transactions

We propose to adopt modifications to the standards for retail pharmacy batch transactions in §§ 162.1102, 162.1202, and 162.1802. The modifications would be the adoption of the NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record, to replace the NCPDP Batch Standard Implementation Guide, Version 1, Release 0, (Version 1.0), February 1996.

We propose to adopt these modifications because the current standard version of the NCPDP Batch Standard Batch Implementation Guide (Version 1, Release 0, February 1, 1996) does not coordinate with the current standard version of the NCPDP Telecommunication Standard Implementation Guide (Version 5, Release 1, September 1999 (version 5.1)). As a practical matter, it was our intent to adopt the batch standard that is the equivalent companion to the telecommunication standard. However, the NCPDP has confirmed with us that Batch Standard Version 1.0 is only compatible with Telecommunication Standard Version 3, Release 2 (Version 3.2). As currently written, our regulations do not permit batched transactions. If the regulations in 45 CFR part 162 were to remain unchanged as of October 16, 2002 (the compliance date for most covered entities), in order to be in compliance with our rules at 45 CFR part 162, as they are currently written, covered entities conducting retail pharmacy transactions would technically not be able to batch transactions but would have to conduct all transactions individually. Therefore, we are proposing to modify our regulations and adopt Batch Standard Version 1, Release 1 (Version 1.1), as the Batch Standard Batch Implementation Guide in place of the NCPDP Batch Standard Batch Implementation Guide Version 1, Release 0 (Version 1.0.)

2. Referral Certification and Authorization Transaction

For retail pharmacy transactions only, we propose to modify the standard for the referral certification and authorization transaction by adopting the NCPDP Telecommunication Guide, Version 5 Release 1, September 1999 as the standard in place of the ASC X12N 278—Health Care Services Review-Request for Review and Response as the standard for the Referral Certification and Authorization transaction. It has come to our attention that, in fact, the ASC X12N 278 is not appropriate for retail pharmacy prior authorization transactions. We have consulted with the NCPDP and the National Association of Chain Drug Stores and have concluded that the ASC X12N 278 implementation specification does not support data critical to retail pharmacy prior authorization transactions. The implementation specification could not be changed to support the transaction before we issued the final regulation because the X12 standards development process for modifying standards could not be completed in time. Because the NCPDP standard adequately supports this transaction for retail pharmacy, and is currently in widespread industry use, we propose to modify the referral certification and authorization standard by adopting the NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record, in place of the ASC X12N 278. This modification will not affect the standards for dental, professional, and institutional referral certification and authorization transactions.

In the proposed rule titled CMS–0005–P, published elsewhere in this **Federal Register**, we are proposing to amend the same section by redesignating the existing text as paragraph (b), revising paragraph (b), and adding introductory text.

3. Health Care Payment and Remittance Advice Transaction

In the August 17, 2000 final rule, we adopted the ASC X12N 835 as the standard for dental, professional, and institutional transactions for the health care payment and remittance advice transaction. We adopted the NCPDP Telecommunications Standard Implementation Guide, Version 5 Release 1, September 1999 as the standard for retail pharmacy drug claims and remittance advice transactions. However, since publication of the final rule, we have concluded that the NCPDP Telecommunications Standard and batch equivalent do not sufficiently support the remittance advice data for this transaction. Consequently, it would not be possible for covered entities to comply with the NCPDP standards for retail pharmacy drug claims and remittance advice transactions. Therefore, we propose to modify the standard for the health care payment and remittance advice transaction for retail pharmacy transactions by adopting the ASC X12N 835 in place of the NCPDP standard. With the implementation of this proposal, the ASC X12N 835 would be the only standard for health care payment and remittance advice transactions. All covered entities, including retail pharmacies (§ 162.1602), would be required to use ASC X12N 835 when conducting a health care payment and remittance advice transaction.

B. Medical Data Code Set for Drugs and Biologics

We propose to repeal the adoption of NDC as the standard medical data code set for reporting drugs and biologics in all standard transactions, except for retail pharmacy transactions, for which standards have been adopted in § 162.1002(c). We would make a conforming change to § 162.1002(f) to specify that the Healthcare Common Procedure Coding System (HCPCS), as maintained and distributed by HHS, would not be required for reporting drugs and biologics. The result of this repeal would be no standard medical data code set in place for reporting drugs and biologics on standard transactions that are not retail pharmacy (hereafter, referred to as nonretail pharmacy transactions).

The absence of a code set standard would not preclude the use of NDC for reporting drugs and biologics by covered entities on standard transactions. Covered entities could continue to report drugs and biologics as they preferred, for example, according to trading partner agreements or as reported before the adoption.

1. Reasons for Proposed Repeal

Since publication of the final rule, numerous health care industry concerns about the use of NDC have been reported. Although the intent of the final rule was to standardize the reporting of drugs and biologics by using one coding system, the industry has indicated that this may not be practical within the industry at this time. The magnitude and scope of issues concerning the implementation of NDC

for reporting drugs and biologics in standard transactions, and the relevance of those issues to industry goals of administrative simplification and HIPAA compliance, prompted HHS to re-examine the adoption of NDC.

The following concerns reported by the industry since publication of the final rule illustrate the industry's view of the escalating cost burden for institutional and professional health care providers who are unfamiliar with the use of NDC.

a. Compliance with the NDC standard for electronic transactions by health care providers on professional claims would require the expansion of data field sizes in nearly all modules of physician practice management systems in order to store and display the thousands of available NDC. Some financial estimates for health care providers suggest complete systems re-engineering and replacements or both would be necessary. The industry has reported that the costs of changing from using HCPCS to NDC for reporting drugs and biologics on institutional claims could exceed an institution's costs for adopting all other combined HIPAA standard transactions.

b. The National Uniform Billing Committee (NUBC) outlined its concerns with the requirement to use NDC on institutional claims, particularly hospital claims, in a letter to former Secretary Donna Shalala, dated September 22, 2000. The following issues were raised by the NUBC in that letter:

- Reporting specific drugs on institutional claims introduces a systems technology requirement that is inconsistent with inpatient claims submission and institutional provider reimbursement, which commonly are based on a Diagnosis-Related Group or per diem payment methodology.
- NDC formats indicate how a drug was acquired but provide no information related to actual dosages administered. Although the NDC second grouping of four numbers identifies drug strength, dosage form, and formulation of the product, it does not reflect the administered dose. An NDC for multiple billing increments is not formulated.
- Operational issues of systems incompatibility among institutional pharmacies, inpatient medical records, and inpatient accounting systems compound expensive system retooling with major training initiatives. Physicians typically order drugs for patients through the hospital pharmacy department by name, unit, and dosage frequency. The pharmacy department does not reference the NDC to pull the drug or initiate a charge transaction. Typically, an NDC is not recorded in a patient's medical record. There is little or no electronic linkage and communication among institutional drug inventory, patient billing, and medical records computer systems.
- Typical institutional patient accounting systems and professional health care provider practice management systems do not accommodate the 11 digits inherent to NDC assignment.
- The lack of sufficiently defined benefits for health care providers for required system upgrade costs to accommodate NDC risks the alternative of providers submitting paper claims to avoid the costs of reporting NDC. Attempts by industry experts to develop a complete 1:1 crosswalk from the currently used HCPCS codes to NDC have been unsuccessful. Different NDC may be assigned to the same drug to identify the various manufacturers of that drug. In contrast, because the HCPCS code is more generic and does not reference the manufacturer, only one code applies to the drug.

The NUBC believes that the NDC coding system is suited more for inventory control and is not appropriate for institutional provider billing, and that the reporting of NDC pertains to retail pharmacy claims only and should not be applicable to institutional claims.

c. HHS posted an e-mail address on its Administrative Simplification web site in October 2000 (*http://www.aspe.hhs.gov/admnsimp/index.htm).* HHS directed inquiries about the August 17, 2000 final rule on standards for electronic transactions to this e-mail address. HHS responses to these inquiries are posted to a ''Frequently Asked Questions'' location on the web site. HHS received and posted numerous separate inquiries reiterating concerns similar to those expressed by the NUBC in its September 22, 2000 letter to former Secretary Shalala referenced above under section II.B of this proposed rule.

d. After publication of the final rule, the Workgroup for Electronic Data Interchange (WEDI) (which is named in the Social Security Act (the Act) as one of the organizations with which the Secretary must consult in adopting HIPAA Administrative Simplification standards) established a Strategic National Implementation Process (SNIP) for consistent industry implementation of the HIPAA Administrative Simplification standards. SNIP workgroups have reiterated some of the concerns expressed by the NUBC about NDC.

e. The NUBC submitted a formal request through the Designated Standards Maintenance Organization (DSMO) process on November 28, 2000 to change the Institutional Implementation Guide to make NDC ''Not Used'' for inpatient claims.

f. A large provider workgroup for implementing HIPAA standards suggested that NDC not be required for reporting drugs and biologics on professional or institutional claims. The workgroup submitted this request through the DSMO process on January 31, 2001 and recommended paper and electronic claim transaction consistency in reporting codes for drugs and biologics. The workgroup stated that neither the institutional nor the professional paper claim can accommodate the 11-digit NDC in the space where a 5-position HCPCS code currently is reported and that HCPCS drug codes should be used to report drugs and biologics on paper and electronic claims for institutional and professional health care providers.

g. The Subcommittee on Standards and Security of the National Committee on Vital and Health Statistics (NCVHS) held public hearings on HIPAA implementation issues on February 1, 2001. Health care industry representatives presented testimony on concerns relating to use of NDC. Those who testified and other attendees are members of health care industry workgroups that support HIPAA and are involved in HIPAA implementation activities. Concerns expressed in the testimony include:

- NDC use by hospitals is limited to the purchase of drugs and maintaining inventory control. The fact that NDC are not (1) used within hospitals for order entry from pharmacies, (2) written in patients' medical records, or (3) accommodated in patient accounting systems, means that extensive system conversions and enhancements are required for institutions to achieve HIPAA compliance.

Additional ancillary staff training on the use of NDC also would be required. Potential for medication errors increases when new system interfaces for drug dispensing systems are created. Routine repackaging of drugs in convenient quantities and brand substitutions by hospitals complicate NDC reporting because many NDC can represent a single drug. The complicated problems with calculating and capturing drug dose information when partial or fractional units are administered makes reporting burdensome and subject to errors.

- While costs could vary with facility size, hospitals estimate a minimum cost

of $200,000 per hospital facility, or a total of $1,296,000,000 for approximately 6480 affected hospital entities, to transition from HCPCS to NDC for reporting drugs and biologics. The expense to expand fields, accommodate thousands of NDC, and upgrade physicians' practice management systems for HIPAA compliance could exceed 10 percent of the total practice management system cost, increasing the financial burden for professional health care providers. Institutional health care providers do not report any accrued benefits from using NDC, despite the high costs for conversion, because drugs are rarely reported on claims. Hospital inpatient claims are paid prospectively based on Diagnosis-Related Groups or per diem basis. Only procedures and diagnoses are recorded. Most drugs are not individually submitted for line-item payment.

- Some industry representatives identified perceived deficiencies in the NDC maintenance process that could potentially result in the re-use of an NDC and the possibility that an NDC for a particular drug could change over time.

h. In a letter to the Secretary, dated February 22, 2001, the NCVHS described the problems with the requirement to use NDC to report drugs and biologics on the standard institutional and professional claims, and the impact of those problems on the health care industry for meeting HIPAA compliance dates. The NCVHS recommended that the Secretary retract the adoption of NDC as the standard medical data code set for reporting drugs and biologics in standard transactions other than retail pharmacy transactions, and that HCPCS codes as well as NDC continue to be used in the standard institutional and professional claim transactions. The NCVHS further stated that it believes that no drug coding system in existence today meets all the needs of the health care industry, and that future needs of the health care industry are for a drug coding system that can be used efficiently for drug inventory, pharmacy transactions, patient care, billing arenas, and ensuring patient safety.

The Office of the Secretary recognizes the need to develop specific criteria for evaluating drug coding systems, and it is initiating steps for coordinating efforts with other agencies and representatives from the health care industry in the evaluation and development of any future proposed drug coding systems.

2. Alternative Under Consideration: Comment Solicited

An advantage to not adopting a replacement standard code set for NDC for reporting drugs and biologics in nonretail pharmacy standard transactions at this time is that the industry and HHS would have time to fully evaluate the alternatives available and explore the possibility of the development of a new drug coding system that could meet the current and future needs of the health care industry. However, we recognize that the industry may prefer the certainty of an established standard at this time. We also are considering, as an alternative to not adopting any standard in place of the NDC, the adoption of HCPCS as the code set for reporting drugs and biologics for nonretail pharmacy transactions. As discussed above, the HCPCS code set is in widespread use today by many health care providers that are not retail pharmacies. Were we to adopt HCPCS, we would amend § 162.1002(c) to reflect the adoption of NDC as the standard medical data code set for reporting drugs and biologics in standard transactions for retail pharmacy transactions. We would also amend § 162.1002(f) to reflect the adoption of the HCPCS coding system as the standard medical data code set for reporting drugs and biologics in nonretail pharmacy transactions. We are particularly interested in whether commenters believe the adoption of HCPCS for reporting drugs and biologics on nonretail pharmacy transactions would present operational problems, and what particular operational problems commenters believe would be presented.

C. Compliance Dates

Under the Act, as reflected in § 160.104, the Secretary establishes the compliance date for modifications to standards. The compliance date must not be earlier than 180 days after the adoption date of the modification. We expect the compliance dates for this proposed rule would be 180 days after the effective date of the subsequent final rule.

Additionally, the Administrative Simplification Compliance Act (Pub. L. 107–105) was enacted on December 27, 2001. This law provides an extension to the compliance dates adopted in the Standards for Electronic Transactions final rule of August 17, 2000 (65 FR 50368), in which covered entities, with the exception of small health plans, may submit a plan to the Secretary of Health and Human Services indicating how the entity will come into compliance by October 16, 2003. Since this proposed rule is modifying transactions adopted in the Standards for Electronic Transactions final rule of August 17, 2000 (65 FR 50368), The Administrative Simplification Compliance Act will apply to this proposed rule. In order to obtain an extension, covered entities must submit the plan to the Secretary before October 16, 2002.

D. Implementation Specifications and Incorporation by Reference

This rule would not change the availability of the NCPDPs Telecommunication Standard Implementation Guide or the Batch Standard Batch Implementation Guide.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are 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 Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The collection of information requirements associated with the transaction regulation are currently approved by OMB under OMB approval number 0938–0866. We are soliciting public comments on each of the above issues for the information collection requirements (ICRs) contained in the sections covered by this proposed rule.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, DCES, SSG, Attn: John Burke, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850; ATTN: CMS–0003–P

and

Office of Information and Regulatory Affairs, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

The proposed repeal of the NDC for nonretail pharmacy transactions would result in minimal costs or savings since the industry would continue to use the formats that are currently being used in the health care marketplace. This is due to the fact that most covered entities have not begun to implement NDC because they are aware that this regulation is in process. In the absence of this regulation, health plans and providers would incur a significant future cost for implementing the NDC, including:

- Training provider clinical staff to learn to report NDCs.
- Conversion of plan and provider legacy systems to accommodate the larger size of the NDC.
- Modification of provider clinical systems to interface with pharmacy systems to capture the NDC.
- Modification of plan reimbursement systems to crosswalk NDCs to J codes. Publication of this regulation would permit covered entities to avoid these costs. Industry recognizes the benefit of this change, and has demonstrated wide-spread support for it.

The alternative of adopting HCPCS drug codes as a standard for reporting drugs and biologics for covered entity transactions referenced above under section II. B. 2 would also have minimal costs or savings due to its already current widespread use in the health care industry.

The modifications to the standards for retail pharmacy transactions would also neither increase nor decrease the industry costs or savings. Those modifications to the standards are ones that would simply implement changes that reflect the way the particular segment of the affected industry already operates. Therefore, this is not a major rule because it does not have an economically significant effect of $100 million or more.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. On November 17, 2000, the Small Business Administration (SBA) published a final rule (65 FR 69432) changing the small business size standards for the health care industry. This SBA final rule became effective December 18, 2000. The size standards that the SBA now uses are those defined by the North American Industry Classification System. Before that, the SBA used size standards as defined by the Standard Industrial Codes. The size standard is no longer a uniform $5 million in annual revenues for all components in the health care sector. Rather, the size standard now ranges from $5 million to $25 million. The regulatory flexibility analysis for this proposed rule is linked to the aggregate regulatory flexibility analysis for all the Administrative Simplification standards that appeared in the final rule on Standards for Electronic Transactions (65 FR 50312), published on August 17, 2000, which predated the SBA change. It is appropriate, for purposes of this proposed rule, to continue to use the $5 million small business size standard that was in effect at the time of publication of the final rule on Standards for Electronic Transactions. Nonprofit organizations are considered small entities. Small government jurisdictions with a population of less than 50,000 are considered small entities. Individuals and States are not considered small entities. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all retail pharmacies are considered to be small entities. We have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not need to prepare analyses under section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. The rule as proposed would have little effect, if any, on annual expenditures incurred by State, local, or tribal governments because it would result in the reestablishment of the current status for professional and institutional providers.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of States.

This proposed rule would not affect the final impact analysis of the Standards for Electronic Transactions final rule of August 17, 2000 (65 FR 50350). This rule also would not affect the Regulatory Flexibility Analysis (65 FR 50359) or the Federalism implications of that rule (65 FR 50364).

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services would amend 45 CFR

subtitle A, subchapter C, part 162 as follows:

PART 162—ADMINISTRATIVE REQUIREMENTS

1.The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d—1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. Revise § 162.920(a)(2)(i) and (ii) to read as follows:

§ 162.920 Availability of implementation specifications.

(a) * * *

(2) * * *

(i) The Telecommunication Standard Implementation Guide, Version 5, Release 1, September 1999, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1302, and 162.1802.

(ii) The Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record, National Council for Prescription Drug Programs, as referenced in §§ 162.1102, 162.1202, 162.1302, and 162.1802.

* * * * *

3. In § 162.1002, republish the introductory text, and revise paragraphs (c) and (f) to read as follows:

§ 162.1002 Medical data code sets.

The Secretary adopts the following code set maintaining organization's code sets as the standard medical data code sets:

* * * * *

(c) *National Drug Codes (NDC),* as maintained and distributed by HHS, in collaboration with drug manufacturers, for reporting the following in retail pharmacy transactions for which standards have been adopted:

(1) Drugs.

(2) Biologics.

* * * * *

(f) *The Healthcare Common Procedure Coding System (HCPCS),* as maintained and distributed by HHS, for all other substances, equipment, supplies, or other items used in health care services except drugs and biologics. These items include, but are not limited to, the following:

(1) Medical supplies.

(2) Orthotic and prosthetic devices.

(3) Durable medical equipment.

4. In § 162.1102, republish the introductory text, and revise paragraph (a) to read as follows:

§ 162.1102 Standards for health care claims or equivalent encounter information.

The Secretary adopts the following standards for the health care claims or equivalent encounter information transaction:

(a) *Retail pharmacy drug claims.* The National Council for Prescription Drug Programs (NCPDP) Telecommunication Standard Implementation Guide, Version 5, Release 1, September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

* * * * *

5. In § 162.1202, republish the introductory text, and revise paragraph (a) to read as follows:

§ 162.1202 Standards for eligibility for a health plan.

The Secretary adopts the following standards for the eligibility for a health plan transaction:

(a) *Retail pharmacy drugs.* The NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

* * * * *

6. In § 162.1302, add paragraph (a) to read as follows:

§ 162.1302 Standard for referral certification and authorization.

* * * * *

(a) *Retail pharmacy referral certification and authorization.* The NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

(b) [Reserved]

7. Revise § 162.1602 to read as follows:

§ 162.1602 Standard for health care payment and remittance advice.

Dental, professional, and institutional health care claims and remittance advice. The Secretary adopts the ASC X12N 835—Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091 as the standard for the health care payment and remittance advice transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(b) [Reserved]

8. In § 162.1802, republish the introductory text and revise paragraph (a) to read as follows:

§ 162.1802 Standards for coordination of benefits.

The Secretary adopts the following standards for the coordination of benefits information transaction:

(a) *Retail pharmacy drug claims.* The NCPDP Telecommunication Standard Implementation Guide, Version 5, Release 1 (Version 5.1), September 1999, and equivalent NCPDP Batch Standard Batch Implementation Guide, Version 1, Release 1 (Version 1.1), January 2000, supporting Telecommunication Version 5.1 for the NCPDP Data Record in the Detail Data Record. The implementation specifications are available at the addresses specified in § 162.920(a)(2).

* * * * *

CMS–0003–P

DBB 02/22/2002 4:10 PM

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 20, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–13614 Filed 5–24–02; 4:51 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 162

[CMS–0005–P]

RIN 0938–AK76

Health Insurance Reform: Modifications to Transactions and Code Set Standards for Electronic Transactions

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adopt modifications to certain standards adopted in our regulations entitled ''Health Insurance Reform: Standards for Electronic Transactions'' published in the **Federal Register** on August 17, 2000 (65 FR 50312), which

implemented some of the requirements of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996. The proposed modifications are a result of the Designated Standard Maintenance Organization (DSMO) process to maintain standards adopted by the Secretary and to process requests for adopting new standards or modifying adopted standards.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 1, 2002.

ADDRESSES: In commenting, please refer to file code CMS–0005–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–0005–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays. If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Comments may also be submitted electronically to the following e-mail address: *CMS0005@cms.hhs.gov.* For e-mail procedures, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Stanley Nachimson, (410) 786–6153.

SUPPLEMENTARY INFORMATION:

Public Comments: Normally, we provide a 60-day public comment period for a proposed rule; for this rule, however, there is a 30-day comment period. After publication of the Standards for Electronic Transactions final rule (65 FR 50312), we received an overwhelming response from the affected industry and industry representatives requesting that we modify the standards. The changes we are proposing already were subjected to the public DSMO process and were discussed and approved by the National Committee on Vital and Health Statistics (NCVHS) in public sessions. Therefore, we believe it is unnecessary to provide more than a 30-day comment period for this rule.

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please call (410) 786–9994.

Electronic Comments: We will consider all electronic comments that include the full name, postal address, and affiliation (if applicable) of the sender and are submitted to the electronic address identified in the **ADDRESSES** section of this preamble. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at 7500 Security Boulevard, Baltimore, MD 21244.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Legislation

The Congress included provisions to address the need for standards for electronic transactions and other administrative simplification issues in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, which became effective on August 21, 1996. Through subtitle F of title II of that statute, the Congress added to title XI of the Social Security Act (the Act) a new Part C, titled Administrative Simplification. Pub. L. 104–191 affects several titles in the United States Code. The purpose of this part is to improve the Medicare and Medicaid programs in particular and the efficiency and effectiveness of the health care system in general by encouraging the development of a health information system through the establishment of standards and requirements to facilitate the electronic transmission of certain health information.

Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose several requirements on the Secretary, health plans, health care clearinghouses, and certain health care providers.

We discussed the legislation in greater detail in the Standards for Electronic Transactions final rule (Transactions Rule) published on August 17, 2000 (65 FR 50312), and in a final rule for Privacy of Individually Identifiable Health Information (Privacy Rule) published on December 28, 2000 (65 FR 82462). Rather than repeating the discussion here, we refer the reader to those documents for further information about electronic data interchange and the statutory background.

Section 1172 of the Act makes any standard adopted under part C applicable to (1) health plans, (2) health care clearinghouses, and (3) health care providers who transmit any health information in electronic form in connection with a transaction covered by 45 CFR part 162.

In general, section 1172 of the Act requires any standard adopted by the Secretary under this part to be a standard that has been developed, adopted, or modified by a standard setting organization (SSO). The Secretary may adopt a different standard if the standard will substantially reduce administrative costs to providers and health plans compared to the alternatives, and the standard is promulgated in accordance with the rulemaking procedures of subchapter III of chapter 5 of Title 5, United States Code.

Section 1172 of the Act also sets forth consultation requirements that must be met before standards are adopted by the Secretary. In the case of a standard that is developed, adopted, or modified by an SSO, the SSO must consult with the following Data Content Committees (DCCs) in the course of the development, adoption, or modification

of the standard: the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association. In the case of any other standard, the Secretary is required to consult with each of the above-named groups before adopting the standard and must also comply with the provisions of section 1172(f) of the Act regarding consultation with the National Committee on Vital and Health Statistics (NCVHS).

B. The Transactions Rule

The SSOs have developed a broad range of implementation instructions for implementing standards for particular industry sectors, for example, instructions on how to use the ASC X12N 837 to claim payment for hospital services. The implementation instructions for implementing standards are detailed and highly specific. Section 1172(d) of the Act requires the Secretary to establish specifications for implementing each of the adopted standards, which were adopted in the Transactions Rule. However, because the implementation instructions are voluminous, they were incorporated by reference in the Transactions Rule. This approach, to incorporate by reference, commonly is used by the Office of the Federal Register when external standards developed by SSOs are adopted as national standards. The approach allows the agency to avoid publication of extraordinarily voluminous documents.

C. Designated Standard Maintenance Organizations

The Transactions Rule acknowledged the need for a group of organizations to maintain the standards for health care transaction standards adopted by the Secretary, and to receive and process requests for adopting new standards or modifying adopted standards. ''Designated Standard Maintenance Organization'' (DSMO) is the term used in the Transactions Rule to identify the organizations designated by the Secretary to undertake those functions. Section 162.910 of the Transactions Rule sets forth the conditions under which an organization may be designated a DSMO by the Secretary and the functions to be performed by a DSMO. On August 17, 2000, the Secretary published a **Federal Register** notice (65 FR 50373) designating the following six organizations (three SSOs and three DCCs) as DSMOs. The organization names are followed by their respective websites. All of the SSOs (X12, NCPDP, and HL 7) that developed standards that the Secretary adopted or expects to propose in the near future were designated as DSMOs:

- Accredited Standards Committee X12 (ASC X12) (*http://www.x12.org*).
- Health Level Seven, Inc. (HL 7) (*http://www.hl7.org*).
- National Council for Prescription Drug Programs (NCPDP) (*http://www.ncpdp.org*).
- National Uniform Billing Committee (NUBC) (*http://www.nubc.org*).
- National Uniform Claim Committee (NUCC) (*http://www.nucc.org*).
- Dental Content Committee of the American Dental Association (*http://www.ada.org*).

The six organizations signed a Memorandum of Understanding (MOU) agreeing to undertake the functions specified in § 162.910 and to follow a framework of cooperation with each other and HHS. The initial term of the MOU is 3 years and is automatically renewed for subsequent 1-year periods. The MOU document sets forth a general process to be followed by the DSMOs when a request is made to change the HIPAA standards. The DSMOs designated a steering committee to facilitate implementation of the MOU. In order to manage the change request process, the signatory organizations agreed to:

- Allow open public access
- Provide for timely review
- Cooperate and communicate
- Consider all viewpoints
- Evaluate the impact of each change request
- Maintain a national perspective
- Conform to law

A web site (*http://www.hipaa-dsmo.org*) was established for requesting changes. For additional information regarding the general change request management process, see the MOU document which is available at: *www.hipaa-dsmo.org/mou.pdf.*

After the initial standards were adopted in the Transactions Rule, a significant number of change requests were submitted through the DSMO process. Many of those change requests were for changes that were considered by the submitters to be essential to permit initial implementation of the standards throughout the entire healthcare industry. Those essential changes address specific details or elements within the implementation specifications.

You can review all change requests reviewed by the DSMOs and sent to NCVHS for adoption as addenda to the final rule at *http://hipaa-dsmo.org/crs/fasttrack.pdf.* (Nonessential changes are still addressed by the general change request management process set forth in the MOU.) The procedure for electronically submitting change requests to the DSMOs and specific details on submitted requests such as business needs and disposition are available at the DSMO change request web site: *http://www.hipaa-dsmo.org.*

The DSMOs as a group presented their list of proposed modifications that they judged essential for implementation to the NCVHS. The NCVHS held public hearings on those proposed changes (transcripts of those hearings are available at *http://www.ncvhs.hhs.gov*). The NCVHS made its own determination about the modification requests and recommended that the Secretary adopt all of the changes proposed by the DSMOs as modifications to the national standards.

II. Provisions of the Proposed Regulations

The Secretary reviewed the changes recommended by the NCVHS and is proposing their adoption in this rule.

A. Summary

This rule proposes to make some limited technical modifications to some of the transactions standards, specifically the implementation specifications, adopted in the Transactions Rule by adopting those changes identified by the DSMOs, and approved by the NCVHS, as necessary to permit initial implementation of the standards within the industry. Details of the proposed modifications are not set forth specifically in this document, but are available at *http://hipaa-dsmo.org/crs/fasttrack.pdf.* A summary of those details follows:

A total of 231 change requests were submitted to the DSMOs for consideration. 85 requests were rejected because the implementation specifications already met the specified business need, or the business need was not well substantiated. 21 requests were recommended for future changes. 6 requests were withdrawn by the submitter. 7 requests were referred to the Department as policy issues. The remaining 115 change requests were approved and are included in the draft addenda. They fell into 2 categories—48 maintenance changes (minor error corrections, clarifications) and 67 modifications to the standards. Details of these 67 modifications include:

- Changing required data elements to situational (about 20 % of changes) Submitters pointed out several data elements that were required by the original standards, but were really only needed in some situations. These data

elements were made situational in the addenda, with clearly defined situations. Examples are:

1. Provider Taxonomy codes on claims-many health plans store this information on their systems when providers enroll, so there is no need to continually send this information. The code will now only be reported ''when adjudication is known to be impacted by the code.''

2. Date last seen by physician (used for certain physical therapy claims)—this is only needed by Medicare, so usage was changed from required on all claims to ''required on Medicare claims.''

• Removal of certain data elements (about 20% of changes)

Several data elements were removed since they do not appear to be needed.

Examples are:

1. Referral date

2. Estimated date of birth

• Allowing certain items to be reported via external code sets rather than data elements in the transaction (about 20% of changes)

There were several instances where codes could be used to indicate certain data elements. This will allow external code set organizations to easily update codes and reporting, as opposed to having the DSMOs make changes to the standards.

Examples are:

1. Special program indicator codes

2. Newborn birth weights

• Adding additional functionality to some transactions (about 40% of changes) Requestors suggested several additional data elements, codes, or loops to enable them to do certain business functions in the transactions. These include:

1. Cross-referencing two subscriber IDs (surviving spouse and dependents)

2. Sending a patient's primary care physician number

The DSMOs and the NCVHS determined that these proposed modifications would respond to industry requests for changes that would facilitate HIPAA implementation.

The SSOs have incorporated the proposed modifications for each transaction into draft addenda for each implementation specification. These draft addenda represent the final product of the DSMO change request process, in that the requested change successfully completed the DSMO change request process in the form of proposed draft addenda to the adopted implementation specifications. As previously discussed, the original implementation specifications are incorporated by reference. This rule proposes to adopt the modifications in the draft addenda. The addenda would be incorporated by reference just as are the original implementation specifications. We are are soliciting comments specifically on those modifications found in the draft addenda. Comments may be submitted for specific individual proposed modifications or for the proposed modifications collectively. The full text of the draft addenda can be obtained from the Washington Publishing Company, PMB 161, 5284 Randolph Road, Rockville, Md., 20852–2116; telephone 301–949–9740. They are also available through the Washington Publishing Company on the Internet at *http://hipaa.wpc-edi.com/HIPAAAddenda_40.asp.*

B. Proposed Modifications

The Transactions Rule established standards for eight electronic transactions, including, when appropriate, specific standards tailored to specific industry sectors, for example, retail pharmacy, institutional, and professional. The modifications proposed here would affect some of the transaction standards (identified below). The new standards would consist of the implementation guide plus the addenda. The addenda are identified below:

1. Health care claims or equivalent encounter information (§ 162.1102).

a. Dental Health Care Claims. The ASC X12N Addenda to Health Care Claim: Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097A1 (NPRM Draft Addenda October 2001).

b. Professional Health Care Claims. The ASC X12N Addenda to Health Care Claim: Professional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X098A1 (NPRM Draft Addenda October 2001).

c. Institutional Health Care Claims. The ASC X12N Addenda to Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096A1 (NPRM Draft Addenda October 2001).

2. Eligibility for a health plan (§ 162.1202).

Dental, professional, and institutional. The ASC X12N Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092A1 (NPRM Draft Addenda October 2001).

3. Referral certification and authorization (§ 162.1302).

The ASC X12N Addenda to Health Care Services Review-Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094A1 (NPRM Draft Addenda October 2001). In the proposed rule titled CMS–0003–P, published elsewhere in this **Federal Register** issue, we are proposing to add a new paragraph (a) to this section.

4. Health care claim status (§ 162.1402).

The ASC X12N Addenda to Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company 004010X093A1 (NPRM Draft Addenda October 2001).

5. Enrollment and disenrollment in a health plan (§ 162.1502).

The ASC X12N Addenda to Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company 004010X095A1 (NPRM Draft Addenda October 2001).

6. Health care payment and remittance advice (§ 162.1602).

a. Dental, professional, and institutional health care claims and remittance advice. The ASC X12N Addenda to Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091A1 (NPRM Draft Addenda October 2001).

C. Compliance Dates

The compliance date for the standards for the transactions adopted in the Transactions Rule is October 16, 2002 for covered entities, with the exception of small health plans, for which the compliance date is October 16, 2003 (65 FR 50368). Under § 160.104, the Secretary establishes the compliance date for modifications. The date must not be earlier than 180 days after the adoption date of the modification.

The Administrative Simplification Compliance Act (Pub. L. 107–105) was enacted on December 27, 2001. This law provides an extension to the compliance dates adopted in the Standards for Electronic Transactions final rule of August 17, 2000 (65 FR 50368), for covered entities, with the exception of small health plans, that submit a plan to the Secretary of Health and Human Services indicating how the entity will come into compliance by October 16, 2003. This plan must be submitted to the Secretary before October 16, 2002. Entities that obtain such an extension will also have a corresponding extension of the compliance dates set forth in this proposed rule.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide a 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 Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The collection of information requirements associated with the transaction regulation are currently approved by OMB under OMB approval number 0938–0866. We are soliciting public comments on each of the above issues for the information collection requirements (ICRs) contained in the sections covered by this proposed rule.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services,
Office of Information Services,
DCES, SSG,
Attn: John Burke,
Room N2–14–26, 7500 Security Boulevard,
Baltimore, MD 21244–1850; and
Office of Information and Regulatory Affairs,
Office of Management and Budget,
Room 10235, New Executive Office Building,
Washington, DC 20503,
Attn: Brenda Aguilar, CMS Desk Officer.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

IV. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). An impact analysis was published in the Standards for Electronic Transactions final rule of August 17, 2000 (65 FR 50350). This analysis detailed the significant costs and benefits of adopting standard electronic transactions and codes sets. The analysis assumed that the adopted standards would be able to be implemented successfully by the industry. The changes in this proposed rule are a result of industry analyses that showed certain minor modifications in the adopted standards would be necessary to permit industry compliance with the standards. These modifications would make limited adjustments and corrections to the overall standards and would facilitate the Congressional intent of implementation of national electronic standards. Thus, the impact analysis previously published would reflect industry experience if the changes proposed in this rule are adopted.

In relation to the prior impact analysis, this rule would impose no additional burdens and create no additional costs. All of the proposed changes in this rule are required to facilitate successful implementation of the standards. Their implementation would, in fact, avoid costs that were not anticipated in the initial impact analysis. Therefore, no additional impact analysis under Executive Order 12866 is required.

It is estimated that substantial costs would incur for the health care industry without the adoption of these proposed changes. The proposed changes eliminate the need for expensive computer system changes, and in some cases, facilitate an implementation that might not have been possible without the proposed changes. The industry has approved these proposed changes as an essential component to their HIPAA implementation.

A total of 231 change requests were submitted to the DSMOs for consideration. 85 requests were rejected because the implementation specifications already met the specified business need, or the business need was not well substantiated. 21 requests were recommended for future changes. 6 requests were withdrawn by the submitter. 7 requests were referred to the Department as policy issues. The remaining 115 change requests were approved and are included in the draft addenda. They fell into 2 categories –48 maintenance changes (minor error corrections, clarifications) and 67 modifications to the standards. Details of these 67 modifications include:

- Changing required data elements to situational (about 20% of changes)

Submitters pointed out several data elements that were required by the original standards, but were really only needed in some situations. These data elements were made situational in the addenda, with clearly defined situations. Examples are:

1. Provider Taxonomy codes on claims—many health plans store this information on their systems when providers enroll, so there is no need to continually send this information. The code will now only be reported ''when adjudication is known to be impacted by the code.''

2. Date last seen by physician (used for certain physical therapy claims)—this is only needed by Medicare, so usage was changed from required on all claims to ''required on Medicare claims.''

- Removal of certain data elements (about 20% of changes)

Several data elements were removed since they do not appear to be needed.

Examples are:

1. Referral date.
2. Estimated date of birth.

- Allowing certain items to be reported via external code sets rather than data elements in the transaction (about 20% of changes)

There were several instances where codes could be used to indicate certain data elements. This will allow external code set organizations to easily update codes and reporting, as opposed to having the DSMOs make changes to the standards.

Examples are:

1. Special program indicator codes.
2. Newborn birth weights.

- Adding additional functionality to some transactions (about 40% of changes)

Requestors suggested several additional data elements, codes, or loops to enable them to do certain business functions in the transactions. These include:

1. Cross-referencing two subscriber IDs (surviving spouse and dependents).

2. Sending a patient's primary care physician number.

These changes recognize that several pieces of information initially required

by the standards were unduly burdensome to collect, so have been changed to only be collected in a more limited set of circumstances.

One particular example is that of the provider information to be collected for each service on a hospital claim. The initial standards required that this information be collected if the provider is different for each service (which it usually is in a hospital—radiologists read x-rays, physical therapists provide therapy, etc.). Many hospitals said that their systems do not routinely collect the different providers for each claim, that this information is not currently used by health plans for processing most claims, and it would be extremely burdensome to collect such information.

As a result, the condition under which this information was collected was revised in the implementation guide to state ''Required when the line level information is known to impact adjudication''. This will substantially reduce the number of claims for which this information needs to be collected.

There are other examples of data elements that have been removed or will be required under more limited circumstances.

The RFA requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. On November 17, 2000, the Small Business Administration (SBA) published a final rule (65 FR 69432) changing the small business size standards for the health care industry. This SBA final rule became effective December 18, 2000. The size standards that the SBA now uses are those defined by the North American Industry Classification System. Before that, the SBA used size standards as defined by the Standard Industrial Codes. The size standard is no longer a uniform $5 million in annual revenues for all components in the health care sector. Rather, the size standard now ranges from $6 million to $29 million. The regulatory flexibility analysis for this proposed rule is linked to the aggregate regulatory flexibility analysis for all the Administrative Simplification standards that appeared in the final rule on Standards for Electronic Transactions (65 FR 50312), published on August 17, 2000, which predated the SBA change. It is appropriate, for purposes of this proposed rule, to continue to use the $5 million small business size standard that was in effect at the time of publication of the final rule on Standards for Electronic Transactions. Nonprofit organizations are considered small entities. Small government jurisdictions with a population of less than 50,000 are considered small entities. Individuals and States are not considered small entities. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all retail pharmacies are considered to be small entities. We have determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this proposed rule would not have a significant impact on a substantial number of small rural hospitals. Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would have no mandated consequential effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this proposed rule would not significantly affect the rights, roles and responsibilities of States.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 162

Administrative practice and procedure, Electronic transactions, Health facilities, Health insurance, Hospitals, Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services would amend 45 CFR subtitle A, subchapter C, part 162 as follows:

PART 162—ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 162 continues to read as follows:

Authority: Secs. 1171 through 1179 of the Social Security Act (42 U.S.C. 1320d—1320d–8), as added by sec. 262 of Pub. L. 104–191, 110 Stat. 2021–2031, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2 (note)).

2. Revise § 162.1102 (b), (c) and (d) to read as follows:

§ 162.1102 Standards for health care claims or equivalent encounter information.

* * * * *

(b) *Dental Health Care Claims.* The ASC X12N 837–Health Care Claim Dental, Version 4010, May 2000, Washington Publishing Company, 004010X097 and Addenda to Health Care Claim Dental, Version 4010, October 2001, Washington Publishing Company, 004010X097A1. The implementation specification is available at addresses specified in § 162.920(a)(1).

(c) *Professional Health Care Claims.* The ASC X12N 837–Health Care Claim: Professional, Volumes 1 and 2, version 4010, May 2000, Washington Publishing Company, 004010X098 and Addenda to Health Care Claim: Professional, Volumes 1 and 2, version 4010, October 2001, Washington Publishing Company, 004010X098A1. The implementation specification is available at the address specified in § 162.920(a)(1).

(d) *Institutional Health Care Claims.* The ASC X12N 837–Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, May 2000, Washington Publishing Company, 004010X096 and Addenda to Health Care Claim: Institutional, Volumes 1 and 2, Version 4010, October 2001, Washington Publishing Company, 004010X096A1. The implementation specification is available at the addresses specified in § 162.920(a)(1).

3. Revise § 162.1202(b) to read as follows:

§ 162.1202 Standards for eligibility for a health plan.

* * * * *

(b) *Dental, professional, and institutional.* The ASC X12N 270/271–Health Care Eligibility Benefit Inquiry and Response, Version 4010, May 2000, Washington Publishing Company, 004010X092 and Addenda to Health Care Eligibility Benefit Inquiry and Response, Version 4010, October 2001, Washington Publishing Company, 004010X092A1. The implementation specification is available at the addresses specified in § 162.920(a)(1).

* * * * *

4. Revise § 162.1302 to read as follows:

§ 162.1302 Standard for referral certification and authorization.

The Secretary adopts the following standards for the referral certification and authorization transaction:

(a) [Reserved]

(b) *Dental, professional, and institutional referral certification and authorization.* The Secretary adopts the ASC X12N 278–Health Care Services Review-Request for Review and Response, Version 4010, May 2000, Washington Publishing Company, 004010X094 and Addenda to Health Care Services Review-Request for Review and Response, Version 4010, October 2001, Washington Publishing Company, 004010X094A1 as the standard for the referral certification and authorization transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

5. Revise § 162.1402 to read as follows:

§ 162.1402 Standard for health care claims status.

The Secretary adopts the ASC X12N–276/277 Health Care Claim Status Request and Response, Version 4010, May 2000, Washington Publishing Company, 004010X093 and Addenda to Health Care Claim Status Request and Response, Version 4010, October 2001, Washington Publishing Company, 004010X093A1 as the standard for the health care claim status transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

6. Revise § 162.1502 to read as follows:

§ 162.1502 Standard for enrollment and disenrollment in a health plan.

The Secretary adopts the ASC X12N 834–Benefit Enrollment and Maintenance, Version 4010, May 2000, Washington Publishing Company, 004010X095 and Addenda to Benefit Enrollment and Maintenance, Version 4010, October 2001, Washington Publishing Company, 004010X095A1 as the standard for enrollment and disenrollment in a health plan transaction. The implementation specification is available at the addresses specified in § 162.920(a)(1).

7. Revise § 162.1602(b) to read as follows:

§ 162.1602 Standards for health care payment and remittance advice.

* * * * *

(b) *Dental, professional, and institutional health care claims and remittance advice.* The ASC X12N 835–Health Care Claim Payment/Advice, Version 4010, May 2000, Washington Publishing Company, 004010X091 and Addenda to Health Care Claim Payment/Advice, Version 4010, October 2001, Washington Publishing Company, 004010X091A1. The implementation specification is available at the addresses specified in § 162.920(a)(1).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 20, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–13615 Filed 5–24–02; 4:53 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1198, MB Docket No. 02–116, RM–10233]

Digital Television Broadcast Service; Billings, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KTVQ Communications, Inc., licensee of station KTVQ(TV), NTSC channel 2, Billings, Montana, requesting the substitution of DTV channel 10 for station KTVQ(TV)'s assigned DTV channel 17. DTV Channel can be allotted to at reference coordinates 45–46–00 N. and 108–27–27 W. with a power of 160, a height above average terrain HAAT of 165 meters. Since the community of Billings is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before July 15, 2002, and reply comments on or before July 30, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, 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: Scott S. Patrick, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for KTVQ Communications, Inc.)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–116, adopted May 17, 2002, and released May 24, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Montana is amended by removing DTV channel 17 and adding DTV channel 10 at Billings.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–13646 Filed 5–30–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 2002–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001. Section 1008 requires contractors to submit, and DoD to process, payment requests in electronic form.

DATES: DoD will consider all comments received by July 30, 2002.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D001 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D001.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to add a new DFARS subpart and a contract clause to implement Section 1008 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398). Section 1008 provides that—

- Contractors must submit electronically, and DoD must process electronically, requests for payment under DoD contracts;
- DoD must transmit any supporting documentation electronically within DoD;
- The Secretary of Defense may exempt cases in any category if the Secretary determines that the requirement for using electronic means for submitting or transmitting payment requests is unduly burdensome; and
- This requirement shall apply to contracts for which solicitations are issued after June 30, 2001. DoD may delay implementation if the Secretary of Defense makes a finding that it is impracticable to implement this requirement by June 30, 2001, and publishes such notice in the **Federal Register**. In no event may implementation be delayed to a date after October 1, 2002.

Consistent with Section 1008(b) of the Defense Authorization Act, DoD submitted a plan to Congress describing how Section 1008 would be implemented. On August 21, 2001, DoD published a notice in the **Federal Register** (66 FR 43841) which announced a delay in implementation of Section 1008 until October 1, 2002.

This proposed DFARS rule—

- Requires contractors to submit requests for contract financing and invoice payments in electronic form;
- Requires DoD officials receiving payment requests in electronic form to process the payment requests and supporting documentation in electronic form;
- Identifies three acceptable electronic forms for transmission of payment requests. The rule also permits the contracting officer to authorize the contractor to use another electronic form, with the concurrence of the payment office and the contract administration office; and
- Identifies exemption categories being considered by DoD. The Director of Defense Procurement intends to process a request for the Secretary of Defense to approve exemptions for the categories identified in the rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any start-up costs that contractors will incur to comply with the rule are expected to be minimal, and should be offset by the reduced administrative costs that are expected to result from the electronic submission and processing of invoices. In addition, the rule provides for an exemption to the requirement for electronic submission in cases where the requirement would be unduly burdensome. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D001.

C. Paperwork Reduction Act

This rule does not impose any additional information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements for contractors to provide non-electronic payment requests already have been approved by OMB as indicated below:

FAR clause No.	Clause title	OMB control No.	Expiration date
52.216–7	Allowable Cost and Payment	9000–0069	June 30, 2002.

FAR clause No.	Clause title	OMB control No.	Expiration date
52.232–7	Payments Under Time-and-Materials and Labor-Hour Contracts	9000–0070	June 30, 2002.
52.232–12	Advance Payments	9000–0073	June 30, 2002.
52.232–16	Progress Payments	9000–0010	Sept 30, 2002.
52.232–32	Performance-Based Payments	9000–0138	Sept 30, 2004.

Extensions of the currently approved information collection requirements under OMB control numbers 9000–0069, 9000–0070, 9000–0073, and 9000–0010 are current being processed (see the following **Federal Register** notices, respectively, for further information: 67 FR 19558, April 22, 2002; 67 FR 17675, April 11, 2002; 67 FR 17676, April 11, 2002; 67 FR 34683, May 15, 2002).

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 232 and 252 as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Subpart 232.70 is added to read as follows:

Subpart 232.70—Electronic Submission and Processing of Payment Requests

Sec.
232.7000 Scope of subpart.
232.7001 Definitions.
232.7002 Policy.
232.7003 Procedures.
232.7004 Contract clause.

232.7000 Scope of subpart.

This subpart prescribes policies and procedures for submitting and processing payment requests in electronic form to comply with 10 U.S.C. 2227.

232.7001 Definitions.

Electronic form and *payment request,* as used in this subpart, are defined in the clause at 252.232–7XXX, Electronic Submission of Payment Requests.

232.7002 Policy.

(a) Contractors must submit payment requests in electronic form, except for—

(1) Purchases paid for with a Governmentwide commercial purchase card;

(2) Awards made to foreign vendors for work performed outside the United States;

(3) Classified contracts or purchases (see FAR 4.401) when electronic submission and processing of payment requests could compromise the safeguarding of classified information or national security;

(4) Contracts awarded by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7), or contracts awarded by contracting officers in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies;

(5) Purchases to support unusual or compelling needs of the type described in FAR 6.302–2; and

(6) Cases where the Secretary of Defense determines that the requirement for using electronic means for submitting or processing payment requests and supporting documentation is unduly burdensome.

(b) DoD officials receiving payment requests in electronic form must process the payment requests in electronic form. Any supporting documentation necessary for payment, such as receiving reports, contracts, contract modifications, and required certifications, also must be processed in electronic form.

232.7003 Procedures.

(a) The accepted electronic forms for transmission are—

(1) Web Invoicing System (see website—*https://ecweb.dfas.mil*);

(2) Wide Area WorkFlow Receipts and Acceptance (see website—*https://rmb.ogden.disa.mil*); and

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats (see website—*http://www.x12.org* for information on EDI formats; see website—*http://www.dfas.mil/ecedi* for EDI implementation guides).

(b) If the payment office and the contract administration office concur, the contracting officer may authorize a contractor to submit a payment request—

(1) Using an electronic form other than those listed in paragraph (a) of this section; or

(2) In other than electronic form if, after contract award, the contractor is unable to submit, or DoD is unable to receive, the payment request in electronic form.

232.7004 Contract clause.

Except as provided in 232.7002(a), use the clause at 252.232–7XXX, Electronic Submission of Payment Requests, in solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

3. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''(XXX 2002)''; and

b. In paragraph (b) by adding, in numerical order, the entry ''___ 252.232–7XXX Electronic Submission of Payment Requests (XXX 2002) (10 U.S.C. 2227)''.

4. Section 252.232–7XXX is added to read as follows:

252.232–7XXX Electronic Submission of Payment Requests.

As prescribed in 232.7004, use the following clause:

Electronic Submission of Payment Requests (XXX 2002)

(a) *Definitions.* As used in this clause—

(1) *Contract financing payment* and *invoice payment* have the meanings given in section 32.001 of the Federal Acquisition Regulation.

(2) *Electronic form* means any automated system that transmits information electronically from the initiating system to all affected systems.

(3) *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests using one of the following electronic forms:

(1) Web Invoicing System (WInS). Information regarding WInS is available on the Internet at *https://ecweb.dfas.mil.*

(2) Wide Area WorkFlow Receipts and Acceptance (WAWF–RA). Information regarding WAWF–RA is available on the Internet at *https://rmb.ogden.disa.mil.*

(3) American National Standards Institute (ANSI) X.12 electronic data interchange (EDI) formats.

(i) Information regarding EDI formats is available on the Internet at *http://www.x12.org*.

(ii) EDI implementation guides are available on the Internet at *http://www.dfas.mil/ecedi*.

(4) Another electronic form authorized by the Contracting Officer.

(c) If, after contract award, the Contractor is unable to submit a payment request in electronic form, or the Government is unable to receive a payment request in electronic form, the Contractor shall submit the payment request using a method mutually agreed to by the Contractor and the Contracting Officer.

(d) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

[FR Doc. 02–13532 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI15

Endangered and Threatened Wildlife and Plants; Listing of Roswell Springsnail, Koster's Tryonia, Pecos Assiminea, and Noel's Amphipod With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), give notice that we are holding a public hearing for the proposed rule to list the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's tryonia (*Tryonia kosteri*), Pecos assiminea (*Assiminea pecosensis*) and Noel's amphipod (*Gammarus desparatus*) as endangered with critical habitat under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We also give notice of the extension of the comment period for the proposed rule for these species. The extension of the comment period will be for 90 additional days and will allow all interested parties to submit written comments on the proposal. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: We will hold a public hearing in Carlsbad, New Mexico, from 6 to 8 p.m. on Tuesday, June 18, 2002, to solicit comments on the proposed rule. We will consider all comments received at the public hearing or those submitted in writing by July 14, 2002.

ADDRESSES: The location for the public hearing is room 153 of the Instructional Building on the New Mexico State University Campus in Carlsbad, NM.

You may submit written comments and materials concerning the proposal at the hearing or send them directly to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113. Written comments may also be sent by facsimile to (505) 346–2542 or *R2FWE_AL@fws.gov*. You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8 a.m. to 4:30 p.m., at the above address. You may obtain copies of the proposed rule from the above address, by calling 505/346–2542, or from our website at *http://ifw2es.fws.gov/Library/*.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section) (telephone 505/346–2525, ext. 143; facsimile 505/346–2542) or visit our website at *http://ifw2es.fws.gov/*.

SUPPLEMENTARY INFORMATION: On November 22, 1985, we received a petition from Mr. Harold F. Olson, Director of the New Mexico Department of Game and Fish, to add 11 species of New Mexican mollusks to the Federal list of endangered and threatened wildlife. Roswell springsnail (*Pyrgulopsis roswellensis* formerly *Fontelicella* sp. (Hershler 1994)), Koster's tryonia, and Pecos assiminea were among the 11 species. We determined the petition presented substantial information and found that the requested action may be warranted and published a positive 90-day petition finding in the **Federal Register** on August 20, 1986 (51 FR 29671). A subsequent 12-month finding published in the **Federal Register** on July 1, 1987 (52 FR 24485), concluded that the petitioned action was warranted but precluded by other higher priority listing actions. A proposed rule to list these four species as endangered with critical habitat was published in the **Federal Register** on February 12, 2002 (67 FR 6459). The proposed rule constitutes our 12-month recycled petition finding for the Roswell springsnail, Koster's tryonia, and Pecos assiminea. The proposed rule includes a proposal for Noel's amphipod, which is found in the same locations as the other three species and shares the same threats and management needs.

These species occur at sinkholes, springs, and associated spring runs and wetland habitats. They are found at two sites in Chaves County, NM, one site in Pecos County, TX, and one site in Reeves County, TX. Pecos assiminea is also known from one area in Coahuila, Mexico.

In the proposed rule we determined that these three snails and one amphipod have an exceedingly limited distribution and are imperiled by local and regional groundwater depletion, surface and groundwater contamination, oil and gas extraction activities within the supporting aquifer and watershed, and direct loss of their habitat (*e.g.,* through burning or removing marsh vegetation, cementing, or filling of habitat). This proposal, if made final, will implement the Federal protection and recovery provisions of the Act for these invertebrate species.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rule-making. During the hearing we will present information about the proposed action. We invite the public to submit information and comments either at the hearings or in writing. This notice and public hearing will allow all interested parties to submit comments on the proposed rule and proposed designation. We are seeking comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal.

We may have to limit the time allotted for oral statements if the number of people who wish to comment necessitates such a limitation. We encourage persons wishing to comment at the hearings to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Persons may send written comments to our office (*see* **ADDRESSES** section) at any time during the open comment period. We will give equal consideration to oral and written comments. Concurrently with the

publication of this notice we are publishing legal notices in local newspapers announcing the date, time, and location of this hearing.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit, such as those of the Roswell springsnail, Koster's tryonia, Pecos assiminea, and Noel's amphipod, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for the critical habitat designation. We will notify the public of the availability of the draft NEPA document for this proposal so that interested and affected parties may participate and contribute to a final decision. The draft NEPA document will be sent out for a minimum 45-day public comment period, during which comments will be solicited.

In addition, we will conduct a robust economic analysis on the effects of the proposed critical habitat designation prior to a final determination. We will conduct an analysis that complies with the ruling by the Tenth Circuit Court of Appeals in *New Mexico Cattle Growers Association, et. al.* v. *U.S. Fish and Wildlife Service.* When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period at that time to accept comments on the draft economic analysis, draft NEPA document, or further comment on the proposed rule. We will also transmit the draft documents to all who commented on the proposed rule, and send the documents to anyone who requests a copy. We are particularly interested in comments or suggestions on reasons why any particular area should or should not be designated as critical habitat, information on the distribution and quality of habitat for these four invertebrate species, land use practices and current or planned activities in areas that may be affected by a designation of critical habitat, and any other pertinent issues of concern.

Authority

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

Dated: May 21, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–13534 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 051302B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Amendment Addressing Sustainable Fisheries Act Definitions and Other Required Provisions in Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands; Scoping Meetings

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); notice of scoping meetings; request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) intends to prepare a DSEIS to assess the impacts on the natural and human environment of the various managed fisheries related to the management measures proposed under the draft Comprehensive Amendment Addressing Sustainable Fishery Act (SFA) Definitions and Other Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in the Fishery Management Plans (FMPs) of Puerto Rico and the U.S. Virgin Islands (Comprehensive SFA Amendment).

DATES: Written comments on the scope of issues to be addressed in the DSEIS must be received by July 1, 2002. The scoping meetings will be held in June 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times for the scoping meetings.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on the proposed management measures should be sent to the Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920; telephone: (787) 766–592; fax: (787) 766–6239; or you can send comments by e-mail to: miguel.a.rolon@noaa.gov or graciela.garcia-moliner@noaa.gov. The scoping meetings will be held in Puerto Rico, St. Thomas, and St. Croix, USVI. See **SUPPLEMENTARY INFORMATION** for specific meeting locations.

FOR FURTHER INFORMATION CONTACT: Graciela García-Moliner, phone: (787) 766–5926, e-mail: graciela.garcia-moliner@noaa.gov or Michael C. Barnette; phone: (727) 570–5305; fax: (727) 570–5583, e-mail: michael.barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The Caribbean fisheries for Corals and Reef Associated Plants and Invertebrates, Queen Conch, Reef Fish, and Spiny Lobster in the exclusive economic zone are managed under FMPs prepared by the Council and approved and implemented by NMFS. In January 1985 NMFS prepared an Environmental Impact Statement (EIS) for the Spiny Lobster FMP. In February 1985 NMFS prepared an EIS for the Reef Fish Fishery FMP. In July 1994 NMFS prepared an EIS for the Corals and Reef Associated Plants and Invertebrates FMP. In January 1996 NMFS prepared an EIS for the Queen Conch FMP. This DSEIS would supplement all of the previous EISs.

The Council is preparing to amend the FMPs for Corals and Reef Associated Plants and Invertebrates, Queen Conch, Reef Fish Fishery, and Spiny Lobster to: (1) Address the consistency with new definitions; (2) address bycatch management measures and bycatch reporting requirements; (3) provide descriptions of the commercial, recreational, and charter fisheries and quantify trends in landings and data specified for each sector; (4) address fishery impact statements to insure they incorporate the likely effects of management measures on fishing communities; and (5) address overfishing provisions specifying objective and measurable criteria for identifying whether a species is overfished and provide subsequent measures to rebuild overfished stocks.

The DSEIS will describe the proposed management measures in the Comprehensive SFA Amendment and will assess the environmental impacts of these proposed and alternative measures. To ensure compliance with the requirements of the SFA in the various FMPs, the Council intends to

evaluate numerous management measures, such as permits, commercial reporting requirements (including species-specific and bycatch reporting), limited entry, time/area closures (including closures for spawning aggregations and habitat protection), size limits, trip limits, gear restrictions, mandatory and/or voluntary observers, the addition and/or deletion of species from the management unit, and recreational possession limits. However, the Council is requesting written comments on the scope of the issues to be addressed in the DSEIS.

Once the Council completes the DSEIS, it will submit it to NMFS for filing with the EPA. The EPA will publish a notice of availability of the DSEIS for public comment in the Federal Register. The DSEIS will have a 45-day comment period. The procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (NEPA) and to NOAA's Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations. The Council will consider public comments received on the DSEIS before adopting final management measures for the Comprehensive SFA Amendment. The Council intends to prepare a final supplemental environmental impact statement (FSEIS) in support of the final Comprehensive SFA Amendment and submit the final Comprehensive SFA Amendment and supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the Magnuson-Stevens Act. NMFS will announce availability of the Comprehensive SFA Amendment for public review during the Secretarial review period through a notice published in the **Federal Register**. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30-day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the Comprehensive SFA Amendment. All public comment periods on the Comprehensive SFA Amendment, its proposed implementing regulations, and its associated FSEIS will be announced through a notice published in the **Federal Register**. NMFS will consider all public comments received during the 60–day Secretarial review period, whether they are on the Comprehensive SFA Amendment, the FSEIS, or the proposed regulations, prior to final agency action.

The scoping meetings will be held at the following dates and locations:

1. *June 4, 2002:* Conference Room of Torres de la Parguera Hotel, Carr. Principal #304, La Parguera, Lajas, Puerto Rico, from 2 p.m. to 5 p.m.;

2. *June 6, 2002:* Conference Room of the Best Western Pierre Hotel, De Diego Avenue, Santurce, Puerto Rico, from 2 p.m. to 5 p.m.;

3. *June 10, 2002:* Conference Room of the Caravelle Hotel, 44A Queen Cross St., Christiansted, St. Croix, U.S.V.I., from 7 p.m. to 10 p.m.; and

4. *June 12, 2002:* Conference Room of the Windward Passage Holiday Inn, Veterans Drive, Charlotte Amalie, St. Thomas, U.S.V.I., from 1 p.m. to 3 p.m.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Graciela García-Moliner at the Council (see **ADDRESSES**).

Dated: May, 2002.

Virginia M. Fay,

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

[FR Doc. 02–13707 Filed 5–30–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 105
Friday, May 31, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0536.

Form No.: AID 1420–62.

Title: AID Contractor Employee Physical Examination Form

Type of Review: Renewal of Information Collection.

Purpose: When USAID awards contracts that require contractor employees to be assigned overseas, the contractor employees are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patients going to lesser-developed countries do not appreciate the difficulties of providing even the most basic medical services in many such areas. This form requests the minimum information needed in order to make a determination as to whether or not the individual should travel to the post in question. If problematic medical conditions are identified prior to overseas travel, the number of medical evacuations are reduced. In addition, the information on the form is used by the U.S. Embassy Health Unit to determine if the individual is eligible to receive access to and medical care from the Health Unit, if such access is routinely granted to individuals with the status of USAID contractor employees. The individual therefore receives a valuable benefit in that those posts with this policy typically do not have adequate medical care available in the local economy.

Annual Reporting Burden: Respondents: 1,280. *Total annual responses:* 1,280. *Total annual hours requested:* 7,680 hours.

Dated: May 22, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–13644 Filed 5–30–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Day Use on the National Forests of Southern California

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on extending the agency's information collection regarding day use on the national forests of southern California.

DATES: Comments must be received in writing on or before July 30, 2002. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Deborah J. Chavez, Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, CA 92507. Comments also may be submitted via facsimile to (909) 680–1501 or send an e-mail to *dchavez@fs.fed.us.*

The public may inspect comments received at the Pacific Southwest Research Station's Riverside Fire Lab at 4955 Canyon Crest Drive, Riverside, CA, during normal business hours (8 a.m. to 4:30 p.m., Pacific Standard Time, Monday through Friday). Visitors are encouraged to call (909) 680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Deborah J. Chavez, Pacific Southwest Research Station, (909) 680–1558 or *dchavez@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Day Use on the National Forests of Southern California.

OMB Number: 0596–0129.

Expiration Date of Approval: 10/31/2002.

Type of Request: Extension.

Abstract: Users of national forests near urban areas in southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic backgrounds. These socio-demographic differences affect the activities people pursue on national forest lands, the sources of information about national forests people utilize, and the site attributes people prefer. Past studies completed through the previously approved collection of information have provided baseline information from which managers have made decisions, revised forest plans, and renovated/redesigned recreation sites. Additional information is needed for the managers of national forests in southern California to validate previous results and to address the continuously changing profile of the visitor population recreating on the national

forests of southern California. In the absence of the information potentially gained from the proposed information collection, the Forest Service will be ill-equipped to implement management changes required to respond to the needs and preferences of day-use visitors.

Data will be collected from visitors at outdoor recreation day-use sites (these include developed picnic areas, general forest day-use sites, off-road staging areas, trails, etc.) on national forests in southern California. Sites, dates of data collection, and individuals participating in the study will be randomly selected for inclusion in the study. Survey instruments will be available in English and Spanish and bilingual research teams will collect the data. Participation in this study is voluntary. The amount of time for completion of a survey is estimated at approximately 15 minutes or less. Participants will answer questions on the following topics: socio-demographic profile, national forest visitation history and patterns, activity patterns, information and communication, site amenities/characteristics, knowledge of place, sense of place/perceptions of place, and general comments. In addition to adjusting management of forests in southern California, results have been presented at local, national, and international meetings. If the Forest Service continues to gather this information, it will be utilized in a similar manner as in previous studies. In addition, the information collected will provide opportunities for comparisons of visitor profiles and use over time. Data will be evaluated and analyzed at the Pacific Southwest Research Station. The consequences of not collecting this data would be: (1) Decreased service delivery due to decreased quality and breadth of information provided to resource managers on the socio-demographic profile of visitors, visitation history and patterns, information and communication, site amenities/characteristics, knowledge of place, and sense of place/perceptions of place; (2) decreased ability of the research unit to continue and expand approved and assigned study topics such as understanding visitor profiles; (3) an increase in the amount of time the research unit needs to answer inquiries from managers and university contacts; (4) increased dependency on cooperator availability to carry out the research unit mission; and (5) loss of information represented in follow-up longitudinal studies.

Estimate of Annual Burden: 15 minutes per respondent.

Type of Respondents: Recreation visitors to national forests near urban areas in southern California.

Estimated Annual Number of Respondents: 600 per year.

Estimated Annual Number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 150 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the Department's submission to the Office of Management and Budget for approval.

Dated: May 24, 2002.

Robert Lewis, Jr.,

Deputy Chief, Research & Development.

[FR Doc. 02–13692 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

P-Pine Project; Coeur d'Alene River Ranger District; Idaho Panhandle National Forests; Kootenai and Shoshone Counties, ID

AGENCY: Forest Service, USDA.

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

SUMMARY: Coeur d'Alene River Ranger District of the Panhandle National Forest is proposing vegetation rehabilitation in the Deerfoot Ridge watershed located east of Hayden Lake, Idaho in Kootenai County (identified as the Ponderosa Pine Restoration Area for the purpose of this assessment). Only dry-site ecosystems within the watershed are proposed for rehabilitation at this time. The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of implementing vegetative restoration activities within the project area.

DATES: Written comments and suggestions should be received no later than 45 days from the date of publication of this notice.

ADDRESSES: Submit written comments and suggestions on the proposal, or requests to be placed on the project mailing list, to the Coeur d'Alene River Ranger District, Attn: Ponderosa Pine Restoration Project, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Sarah Jerome, Project Team Leader, Coeur d'Alene River Ranger District, (208) 664–2318.

SUPPLEMENTARY INFORMATION: The purpose and need for this project is derived from the National Fire Plan, the Upper Columbia River Basin Ecosystem Management Project, and the Coeur d'Alene River Basin Geographic Assessment. Each of these provide documentation of the currently dense, fire-prone state of dry-site ecosystems across the Idaho Panhandle National Forests and in the Coeur d'Alene Basin, and the marked change these ecosystems have undergone over the past century. Site-specific information indicates that these same conditions are occurring on the stand level in the Deerfoot Ridge watershed. Key objectives are to: restore historical conditions in ponderosa pine stands based on the fire ecology of these forest types; trend vegetative species composition toward seral species more resistant to insects and disease; reduce the incidence of noxious weeds; reduce the risk of wildlife in the urban interface; reduce the overall risk of high-intensity, stand-replacing fires; and reduce fragmentation to improve wildlife habitat.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, under which there would be no change from current management of the area. Additional alternatives will represent a range of strategies to manage natural resources in the area. The Idaho Panhandle National Forest Land and Resource Management Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995)

amend Forest Plan guidelines established for riparian areas.

The public was first notified of this proposal and the intention to prepare an environmental impact statement in February 2002. Initially, two areas were under consideration. In addition to the Deerfoot Ridge area, similar activities were proposed in the Two-Mile watershed (north of Silverton, Idaho). Based on additional information gathered, it was determined that these areas are sufficiently different to warrant separate analyses. The Deerfoot Ridge area was selected as the first priority; opportunities to restore ponderosa pine stands in the Two-Mile area will be evaluated under a separate assessment later in the year.

Comments provided by the public and other agencies will be used to develop strategies for management of natural resources in the project area. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in October 2002. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denies, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental impact statement. My address is 3815 Schreiber Way, Coeur d'Alene, ID 83815. Comments should be sent to the Coeur d'Alene River Ranger District, Attn: Ponderosa Pine Restoration Project, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

Dated: May 21, 2002.

Ranotta McNair,

Forest Supervisor.

[FR Doc. 02–13643 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Galena Restoration, Malheur National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: July 15, 1999, a Notice of Intent (NOI) to prepare an environmental impact statement for the Southeast Galena Restoration on the Long Creek Ranger District of the Malheur National Forest, was published in the **Federal Register** (64 FR 38176). Since the project proposed action is being redesigned, the date of any further environmental analysis is unknown. The 1909 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Jan Fauntleroy, Project Leader, PO Box 909, John Day, Oregon 97845, phone 541–3446.

Dated: May 20, 2002.

Bonnie J. Wood,

Forest Supervisor.

[FR Doc. 02–13638 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Central Idaho Resource Advisory Committee Salmon-Challis National Forest Butte, Custer, and Lemhi Counties, ID

AGENCY: Forest Service, USDA Forest Service.

ACTION: Notice of meeting of the Resource Advisory Committee.

SUMMARY: The Central Idaho Resource Advisory Committee will meet at 2:00 p.m., June 6, 2002 at the Challis Ranger District Office, Highway 93 North, Challis, Idaho. The 15-member committee will evaluate proposed resource projects for recommendation to Salmon-Challis National Forest for the year 2002. The meeting is open to the public and time will be scheduled for public comments.

The Central Idaho Resource Advisory Committee was established by the Secretary of Agriculture under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000 to work collaboratively with the Salmon-Challis National Forest to

provide advice and recommendations consistent with the purposes of the Act.

Pam Mihelich,

Administrative Officer, Salmon-Challis National Forest, Designated Federal Official.

[FR Doc. 02–13554 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Council will meet on Wednesday, June 19, 2002 at the Spokane Community College, Colville Campus, Dominion Room at 985 S. Elm Street, Colville, Washington. The meeting will begin at 9 a.m. and conclude at 4 p.m.

Agenda items include: (1) Review, modify and approve minutes from March 21st meeting; (2) review and recommend Title II Projects for FY2003 to be submitted to the forest designated official; (3) develop agenda for next meeting, and (4) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to designated federal official, Nora Rasure or Cynthia Reichelt, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114: (509) 684–7000.

Dated: May 22, 2002.

Nora B. Rasure,

Forest Supervisor.

[FR Doc. 02–13629 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou Resource Advisory Committee (RAC) will meet at 10 a.m. on Thursday, June 25, 2002 and will conclude at approximately 3 p.m. The meeting will be held at the Cave Junction City Hall, 222 Lister Street, Cave Junction, Oregon 97523. The agenda for June 25 meeting includes: (1) Establishing selection criteria and a process to recommend future projects; (2) agreement on what kind of projects the Siskiyou RAC would like to review; and (3) public forum. The public forum is scheduled from 2 to 2:30 p.m. and will be limited to 3–4 minutes for individual presentations (depending on the number of presenters). Written comments are encouraged, particularly if the material cannot be presented within the time limits for the public forum. Written comments may be submitted prior to the June 25th meeting by sending them to the Designated Federal Official Thomas K. Reilly at the address given below.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Thomas K. Reilly; Acting Rogue and Siskiyou National Forests Supervisor; P.O. Box 520, Medford, Oregon 97501; (541) 858–2200.

Dated: May 22, 2002.

Thomas K. Reilly,

Acting Forest Supervisor.

[FR Doc. 02–13636 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will meet Wednesday, June 19, 2002 in Boise, Idaho for a business meeting. The meeting is open to the public.

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

SUPPLEMENTARY INFORMATION: The business meeting on June 19th, begins at 10 a.m., at the Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho. Agenda topics will include review and approval of project proposals, and an open public forum.

Dated: May 23, 2002.

Carol Feider,

Acting Forest Supervisor, Payette National Forest.

[FR Doc. 02–13645 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Administration of Educational Land Grant Act Requests for Conveyance of National Forest System Lands; Interim Direction

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Forest Service has issued an Interim Directive to provide internal administrative direction to guide its employees in the processing of proposals and applications to transfer National Forest System lands to public school districts for educational purposes under the Educational Land Grant Act of 2000 (114 Stat. 368; 16 U.S.C. 479a). The interim directive was issued to Chapter 30 of the Forest Service Handbook (FSH) 5509.11 on Title Claims, Sales, and Grants as Interim Directive No. 5509.11–2002–1.

DATES: The Interim Directive was issued May 24, 2002, and will be effective on June 4, 2002.

ADDRESSES: The interim directive is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the interim directive are also available from the Lands Staff, Mail Stop 1124, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Forest Service Lands Staff, Greg Smith at (202) 205–1769 or Ben Bibb at (202) 205–1238.

Dated: May 24, 2002.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 02–13693 Filed 5–30–02; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 30, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 5, and April 12, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 16367 and 17966) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, Naval and Marine Corps Reserve Center, Mobile, AL.

NPA: GWI Services, Inc., Mobile, AL.

Contract Activity: Naval Facilities Engineering Command, North Charleston, SC.

Service Type/Location: Janitorial/Custodial, FBI Information Technology Center, Fort Monmouth, NJ.

NPA: Monmouth Center for Vocational Rehabilitation, Eatontown, NJ.

Contract Activity: FBI Information Technology Center, Fort Monmouth, NJ.

Service Type/Location: Mess Attendant, 192d FW VA Air National Guard, Sandston, VA.

NPA: The Arc of the Virginia Peninsula, Inc., Hampton, VA.

Contract Activity: 192d FW VA Air National Guard, Sandston, VA.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–13694 Filed 5–30–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: June 30, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, U.S. Army Garrison, Fort Lee, VA.

NPA: Virginia Industries for the Blind, Charlottesville, VA.

Contract Activity: U.S. Army Garrison, Fort Lee, VA.

Service Type/Location: Janitorial/Custodial, FAA, Air Traffic Control Tower, Detroit Metropolitan Airport, Detroit, MI.

NPA: Jewish Vocational Service and Community Workshop, Inc., Southfield, MI.

Contract Activity: Federal Aviation Administration.

Service Type/Location: Janitorial/Custodial, Marine Corps Reserve Center, Brook Park, OH.

NPA: Goodwill Industries of Greater Cleveland, Inc., Cleveland, OH.

Contract Activity: Naval Facilities Engineering Command—Crane, Crane, IN.

Service Type/Location: Mail Support Services, Department of Justice, Drug Enforcement Agency, Newark, NJ.

NPA: The First Occupational Center of New Jersey, Orange, NJ.

Contract Activity: Drug Enforcement Agency.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–13695 Filed 5–30–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[I.D. 052802B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: State Coastal Program/National Estuarine Research Reserve Performance Measurement Questionnaire.

Form Number(s): None.
OMB Approval Number: None.
Type of Request: Emergency request.
Burden Hours: 2,400.
Number of Respondents: 60.
Average Hours Per Response: 40 hours.

Needs and Uses: The information collected will be used to continue to develop a national performance measurement system for the Coastal Zone Management Act. The respondents will be Coastal Zone Management Programs and National Estuary Research Reserve System sites. The information will provide a list of measurable goals, objectives, and indicators and how they are measured by the state coastal program and National Esturaine Research Reserves in order to inform the development of a national performance measurement system.

Affected Public: State, Local, or Tribal Government.

Frequency: One-time.
Respondent's Obligation: Voluntary.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 23, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13706 Filed 5–30–02; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–2001]

Foreign-Trade Zone 126—Sparks, NV, Application for Subzone, Taiyo America, Inc., Carson City, NV; Reopening of Public Comment Period

The comment period for the above case, submitted by the Economic Development Authority of Western Nevada, grantee of FTZ 126, requesting subzone status at the Taiyo America, Inc. facility in Carson City, Nevada (66 FR 14126, 3/9/01), is reopened to allow interested parties time in which to comment on additional information that has been submitted.

The comment period is reopened until July 1, 2002. Rebuttal comments may be submitted during the subsequent 15 day period, until July 15, 2002. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

Dated: May 24, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–13732 Filed 5–30–02; 8:45 am]

BILLING CODE 3810–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052802A]

Proposed Information Collection; Comment Request; Requirements for Taking Endangered or Threatened Species for Research/ Enhancement Purposes

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 30, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lillian Becker or Lamont Jackson at (301)713–2289, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain two sets of information collections: (l) applications for research/enhancement permits, and (2) reporting requirements for permits issued.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. In order to issue permits as under ESA section 10(a)(1)(A), the National Marine Fisheries Service (NMFS) must determine that(1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the ESA.

II. Method of Collection

The collection of information will be in the form of applications, annual reports, and final reports responding to requirements in regulations and instructions; no forms are required.

III. Data

OMB Number: 0648–0402.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Non-profit institutions; state, local, or tribal government; and businesses or other for-profit organizations.
Estimated Number of Respondents: 175.
Estimated Time Per Response: 40 hours for permit applications; 20 hours for permit modification requests; 10 hours for annual reports; and 20 hours for final reports.
Estimated Total Annual Burden Hours: 8000.
Estimated Total Annual Cost to Public: $300.

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 and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13705 Filed 5–30–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend Systems of Records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on (insert date thirty days after publication in **Federal Register**) unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record (February 12, 2002, 67 FR 6506).

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Substantiated Cases and Unsubstantiated-Unresolved Cases. Destroy as a family group 25 years after the end of the calendar year in which the case review committee determination was made or treatment ends. Unsubstantiated/Did Not Occur: Destroy 2 years after the end of the calendar year in which the case review committee determination was made.

* * * * *

F044 AF SG Q

SYSTEM NAME:

Family Advocacy Program Record.

SYSTEM LOCATION:

Headquarters United States Air Force, Office of the Surgeon General, 110 Luke Avenue, Room 400, Bolling Air Force Base, Washington, DC 20332–7050;

Headquarters, Air Force Medical Operations Agency, Family Advocacy Program, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254;

Major Command Surgeons' offices; Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DoD beneficiaries who are entitled to care at Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of suspected and established cases of family maltreatment, assessments and evaluations, investigative reports, check lists, family advocacy case management team minutes and reports, follow-up and evaluative reports, correspondence, and any other supportive data gathered relevant to individual family advocacy program cases. Records of family member exceptional medical and/or educational needs, medical summaries, individual educational program plans, general supportive documentation and correspondence. Secondary prevention records, assessment and survey instruments, service plans, and chronological data. Prevention contact activity files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 40–301, Air Force Family Advocacy Program, and E.O. 9397 (SSN).

PURPOSE(S):

To document the activities of the Family Advocacy Program as they relate to allegations of and substantiated cases of family maltreatment, exceptional educational and/or medical needs of family members, prevention activities, assessment and survey activities; compile database for statistical analysis, tracking, and reporting; evaluate program effectiveness and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, THESE RECORDS OR INFORMATION CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

To any member of the family in whose sponsor's name the file is maintained, in furtherance of treating any member of the family.

To the Attorney General of the United States or his authorized representatives in connection with litigation, or other matters under the direct jurisdiction of the Department of Justice.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

To officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies and relating to the coordination of

family advocacy programs, medical care and research concerning family maltreatment and neglect and exceptional educational or medical conditions.

To private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

To the Federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or families with exceptional medical or educational needs or when involved in child abuse or neglect.

To authorized surveying bodies for professional certification and accreditations.

To the individual organization or government agency as necessary when required by Federal statute, E.O., or by treaty. Drug/Alcohol and Family Advocacy information maintained in connection with Abuse Prevention Programs shall be disclosed only in accordance with applicable statutes.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system, except as stipulated in the 'NOTE' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, in computers, and on computer output products.

RETRIEVABILITY:

Records are retrieved by the name and Social Security Number of the sponsor or the sponsor's spouse.

SAFEGUARDS:

Records are maintained in various types of lockable filing equipment in monitored or controlled access lockable rooms or areas. Records are accessible only to authorized personnel that are properly screened and trained. Computer terminals are located in supervised areas with access controlled by password or other user-code systems. Records on computer storage devices are protected by computer system security software or physically stored in lockable filing equipment.

RETENTION AND DISPOSAL:

Substantiated Cases and Unsubstantiated-Unresolved Cases. Destroy as a family group 25 years after the end of the calendar year in which the case review committee determination was made or treatment ends. Unsubstantiated/Did Not Occur: Destroy 2 years after the end of the calendar year in which the case review committee determination was made.

SYSTEM MANAGER(S) AND ADDRESS:

Division Chief, Air Force Medical Operations Agency, Family Advocacy Division, 2601 Doolittle Road, Building 801, Brooks Air Force Base, TX 78235–5254, Major Command Surgeons, and Commanders of Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains information on them should address inquiries to the Family Advocacy Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices

Requests should include the name and Social Security Number of the individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking to access their records in this system should address requests to the Patient Affairs Officer at the Air Force medical treatment facility where services were provided. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Requests should include the name and Social Security Number of the individual concerned.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, reports from physicians and other medical department personnel; reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b.

[FR Doc. 02–13593 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 4, 5 & 6 June 2002.

Time of Meeting: 0730–1700, 4 June 2002; 0800–1700, 5 June 2002; 0730–1630, 6 June 2002.

Place: SAIC.

Agenda: The Army Science Board's (ASB) Study ''Ensuring the Financial Viability of the Objective Force'' will have a Plenary Meeting on 4, 5 and 6 June. The meeting will be held at SAIC, 4001 Fairfax Drive, Arlington, VA. The Meeting will begin at 0730 hours on the 4th and end at approximately 1630 hours on June 6th.

FOR FURTHER INFORMATION CONTACT: Major Robert Grier, 703–604–7478 or e-mail: *Robert.grier@saalt.army.mil.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–13640 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 10–11 June 2002.

Time(s) of Meeting: 0800–1700, 10 June 2002. 0800–1700, 11 June 2002.

Place: MITRE, McLean, VA.

Agenda: The Army Science Board's (ASB) Study ''Meeting the Future Army Aviation Needs'' will meet for briefings and discussions on the study subject. These meetings will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary matters to be discussed are so inextricably intertwined so as to preclude opening any portion of these meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Ira J. Kuhn @ 703–243–3383 or email: Ira Kuhn@directedtechnologies.com.

Wayne Joyner,

Executive Assistant, Army Science Board.

[FR Doc. 02–13641 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Detection of Antibodies to Squalene in Serum

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/859,389 entitled ''Detection of Antibodies to Squalene in Serum'' filed May 18, 2001. Foreign rights are also available (PCT/US01/16096). The United States Government, as represented by the Secretary of the Army has rights in this invention.

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

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

SUPPLEMENTARY INFORMATION: The invention is a method for detecting squalene in sera.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13686 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend two systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on July 1, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service (August 9, 1996, 61 FR 41592).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'address' and 'shipping/delivery information' to entry.

* * * * *

PURPOSE(S):

Add 'shipment/delivery information' to entry.

* * * * *

STORAGE:

Delete entry and replace with 'Paper in file folders and on electric storage media'.

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14–18, 55252 Mainz-Kastel, Germany, APO 09251–4580; and

Exchange Regions and Area Exchanges at posts, bases, and satellites world-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers who use the services of the Customer Service Desk, including but not limited to those who purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address, and Social Security Number, copies of layaway tickets, requests for refunds, special order forms/procurement request/logs, cash receipt/charge or credit vouchers, rebate coupons, register transaction journal/log, repair vouchers, warranty documents, shipping/delivery information, correspondence between AAFES and the customer and/or vendor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; Army Regulation 25–1, Morale, Welfare, and Recreation Activities and Non-Appropriated Fund Instrumentalities; Army Regulation 60–10, Army and Air Force Exchange Service General Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement, shipping/delivery information, and initiate follow-up actions; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file folders and on electric storage media.

RETRIEVABILITY:

By customer's surname, Social Security Number, document control number, and/or due date.

SAFEGUARDS:

Records are maintained in secured areas, accessible only to authorized personnel having need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Cancelled or completed layaway tickets are held for 6 months after cancellation or delivery of merchandise; purchase orders are retained for 2 years; transaction records are retained for 2 years; refund vouchers are retained for 6 years; returned merchandise slips are retained for 6 years; cash receipt vouchers are retained for 3 years; repair/replacement order slips are held 2 years. All records are destroyed by shredding, all electronic records are destroyed by erasing/reformatting the media.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchase to enable locating pertinent records, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: SD, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide name and sufficient details of purchase to enable locating pertinent records, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and/or vendor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–23 DAPE

SYSTEM NAME:

Standard Installation/Division Personnel System (August 14, 2000, 65 FR 49551).

CHANGES:

SYSTEM IDENTIFIER:

Replace 'DAPE' with 'TAPC'.

SYSTEM NAME:

Add to entry '(SIDPERS)'.

* * * * *

A0600–8–23 TAPC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS).

SYSTEM LOCATION:

National Guard records are located at the Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component records are located at the U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Regular Army records are located at the Army Information Processing Centers located in Chambersburg, PA 17201–4150; Huntsville, AL 35898–7340; Rock Island, IL 61299–7210; and St. Louis, MO 63120–1798.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army personnel, personnel attached from National Guard and/or Army reserve members of the Army National Guard, and individuals currently assigned to a U.S. Army Reserve unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race, citizenship, status, religious denomination, marital status, number of dependents, date of birth, physical profile, ethnic group, grade and date of rank, term of service for enlisted personnel, security clearance, service agreement for non-regular officers, promotion data and dates, special pay and bonus, unit of assignment and identification code, military occupational specialty, civilian occupation, additional skill identifiers, civilian and military education levels, languages, military qualification, assignment eligibility, availability and termination date thereof, security status, suspension of favorable personnel action indicator, Privacy Act disputed record indicator, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–23, Standard Installation/Division Personnel System Database Management; and E.O 9397 (SSN).

PURPOSE(S):

To support personnel management decisions concerning the selection, distribution and utilization of all personnel in military duties, strength accounting and manpower management, promotions, demotions, transfers, and other personnel actions essential to unit readiness; to identify and fulfill training needs; and to support automated interfaces with authorized information systems for pay, mobilization, and other statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, discs, microfiche, punched cards, and computer printouts.

RETRIEVABILITY:

By Name, Social Security Number, or other individually identifying characteristics.

SAFEGUARDS:

Access to data and data storage is controlled and accessible only to authorized personnel and authorized personnel with password capability for the electronic media access.

RETENTION AND DISPOSAL:

Records are maintained one year in records holding area or current file area then retired to National Personnel Records Center. Maintained there for 75 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

National Guard: Chief, National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve Component: Deputy Chief of Staff for Personnel, Headquarters, Department of the Army 300 Army Pentagon, Washington, DC 20310–0300.

Regular Army: Commander, U.S. Army Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries appropriate address below:

National Guard individuals should address inquiries to the National Guard Bureau, Army National Guard Readiness Center, 111 South George Mason Drive, Arlington, VA 22204–1382.

Reserve individuals should address inquiries to the Commander of the Army Headquarters in which the unit is located.

Regular Army individuals should address inquiries to their local Commander.

All individuals should furnish full name, service identification number, current address and telephone number, signature, and specific information concerning the event or incident that will assist in locating the record.

Personal visits may be made. Individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

National Guard and Reserve Component: From the individual, individual's personnel and pay files, other Army records and reports.

Regular Army: From individual, commanders, Army records and documents, other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–13594 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on (insert date thirty days after publication in the **Federal Register**) unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS) (July 12, 1999, 64 FR 37518).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first line, replace 'Defense Protective Service' with 'Pentagon Force Protection Agency.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'The master file is retained permanently. Input and source records are destroyed after data have been entered into the master file or when no loner needed for operational purposes, whichever is later. Output products (electronic or paper) are destroyed when no longer needed for operational purposes.'

* * * * *

S322.15 DMDC

SYSTEM NAME:

Defense Incident-Based Reporting System (DIBRS).

SYSTEM LOCATION:

Primary Location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up Location: Defense Manpower Data Center, DoD Center, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military (includes Coast Guard) or civilian personnel who have been apprehended or detained for criminal offenses which must be reported to the Department of Justice pursuant to the Uniform Crime Reporting Handbook as required by the Uniform Federal Crime Reporting Act.

Active duty military (includes Coast Guard) personnel accused of criminal offenses under the Uniform Code of Military Justice and investigated by a military law enforcement organization.

Active duty military (includes Coast Guard) personnel accused of fraternization, sexual harassment, a sex-related offense, a hate or bias crime, or a criminal offense against a victim who is a minor and investigated by a commander, military officer, or civilian in a supervisory position.

Active duty military (includes Coast Guard) personnel accused of a criminal incident, which is not investigated by a military law enforcement organization, but which results in referral to trial by court-martial, imposition of nonjudicial punishment, or an administrative discharge.

Active duty military (includes Coast Guard) personnel convicted by civilian authorities of felony offenses as defined by State or local law.

Active duty military (includes Coast Guard) personnel who attempt or commit suicide.

Individuals who are victims of those offenses which are either reportable to the Department of Justice or are reportable for having committed criminal incidents in violation of law or regulation.

Active duty military (includes Coast Guard) personnel who must be reported to the Department of Justice under the Brady Handgun Violence Prevention Act because such personnel have been referred to trial by a general courts-martial for an offense punishable by imprisonment for a term exceeding one year; have left the State with the intent of avoiding either pending charges or giving testimony in criminal proceedings; are either current users of a controlled substance which has not been prescribed by a licensed physician (Note: includes both current and former members who recently have been convicted by a courts-martial, given nonjudicial punishment, or administratively separated based on drug use or failing a drug rehabilitation program) or using a controlled substance and losing the power of self-control with respect to that substance; are adjudicated by lawful authority to be a danger to themselves or others or to lack the mental capacity to contract or manage their own affairs or are formally committed by lawful authority to a mental hospital or like facility (Note: includes those members found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to Articles 50a and 72b of the Uniform Code of Military Justice); have been discharged from the Armed Services pursuant to either a dishonorable discharge or a dismissal adjudged by a general courts-martial; or have been convicted in any court of a misdemeanor crime of domestic violence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records compiled by law enforcement authorities (*e.g.,* Pentagon Force Protection Agency, military and civilian police, military criminal investigation services or commands); DoD organizations and military commands; Legal and judicial authority (*e.g.,* Staff Judge Advocates, courts-martial); and Correctional institutions and facilities (*e.g.,* the United States Disciplinary Barracks) consisting of personal data on individuals, to include but not limited to, name; social security number; date of birth; place of birth; race; ethnicity; sex; identifying marks (tattoos, scars, etc.); height; weight; nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; actions taken by military commanders (*e.g.,* administrative and/or non-judicial measures, to include sanctions imposed); court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

Records also consist of personal information on individuals who were victims. Such information does not include the name of the victim or other personal identifiers (*e.g.,* Social Security

Number, date of birth, etc.), but does include the individual's residential zip code; age; sex; race; ethnicity; and type of injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act; DoD Directive 7730.47, Defense Incident-Based Reporting System (DIBRS); and E.O. 9397 (SSN).

PURPOSE(S):

To provide a single central facility within the Department of Defense (DoD) which can serve as a repository of criminal and specified other non-criminal incidents which will be used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance DoD's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) only as follows:

To the Department of Justice:

(1) To compile crime statistics so that such information can be both disseminated to the general public and used to develop statistical data for use by law enforcement agencies.

(2) To compile information on those individuals for whom receipt or possession of a firearm would violate the law so that such information can be included in the National Instant Criminal Background Check System which may be used by firearm licensees (importers, manufactures or dealers) to determine whether individuals are disqualified from receiving or possessing a firearm.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices do not apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, incident number, or any other data element contained in system.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

The master file is retained permanently. Input and source records are destroyed after data have been entered into the master file or when no loner needed for operational purposes, whichever is later. Output products (electronic or paper) are destroyed when no longer needed for operational purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services (includes the U.S. Coast Guard) and Defense agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–13595 Filed 5–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Arkansas River Navigation Study, Phase II, AR and OK

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Little Rock District will prepare an Environmental Impact Statement (EIS) for the Arkansas River Navigation Study, Phase II.

The purpose of the EIS will be to present alternatives and assess the impacts associated with the deepening of several portions of the McClellan-Kerr Arkansas River Navigation System (McKARNS) channel, so that portions of or the entire system would have a navigable depth up to 12 feet, instead of the existing 9-foot deep channel. Under direction of the U.S. Congress, the USACE is conducting this study. The study area includes the Arkansas River Basin in Arkansas and Oklahoma. Deepening the navigation channel would allow the hauling of heavier loads on barges that use the system. Proposed improvements resulting from the study could impact (positively or negatively) agriculture, hydropower, recreation, flood control, and fish and wildlife along the McKARNS.

The EIS will evaluate potential impacts (positive and negative) to the natural, physical, and human

environment as a result of implementing any of the proposed project alternatives that may be developed during the EIS process.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to: Ms. Tricia Anslow, Chief, Environmental Section, Planning Branch, P.O. Box 867, Little Rock, AR 72203–0867, Telephone 501–324–5032, e-mail: *Patricia.Anslow@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *McKARNS:* The McClellan-Kerr Arkansas River Navigation System consists of a series of 18 locks and dams (17 existing and 1 currently under construction) and provides navigation from the Mississippi River to the Port of Catoosa near Tulsa, OK. River flow in the Arkansas River is modified primarily by 11 reservoirs in Oklahoma. The reservoirs are: Keystone, Oologah, Pensacola, Hudson, Fort Gibson, Tenkiller Ferry, Eufaula, Kaw, Hulah, Copan, and Wister. These lakes provide flood control, water supply, hydropower, fish & wildlife, water quality, recreation, and other benefits.

2. *Study History:* The Arkansas River Navigation Study, Phase II is being undertaken by USACE, Little Rock and Tulsa Districts under the direction of the U.S. Congress. The study includes major hydraulics investigations, economics analyses, alternatives development and related analyses in addition to the EIS.

3. *Comments/Scoping Meeting:* Interested parties are requested to express their views concerning the proposed activity. The public is encouraged to provide written comments in addition to or in lieu of, oral comments at scoping meetings. To be most helpful, scoping comments should clearly describe specific environmental topics or issues, which the commentator believes the document should address. Oral and written comments receive equal consideration.

Scoping meetings will be held with government agencies and the public. Public Scoping Meetings will be held in the summer of 2002 in Pine Bluff, AR, Fort Smith, AR, and Tulsa, OK. The location, time, and date will be published at least 14 days prior to each scoping meeting. Comments received as a result of this notice and the news releases will be used to assist the Districts in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian Tribes, and other interested private organizations and parties may participate in the scoping process by forwarding written comments to the above noted address. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents.

4. *Alternatives/Issues:* The EIS will evaluate the effects of channel deepening and other practical alternatives, and other identified concerns. Anticipated significant issues to be addressed in the EIS include impacts on: (1) navigation, (2) flooding, (3) hydropower production, (4) recreation and recreation facilities, (5) river hydraulics, (6) fish and wildlife resources and habitats, and (7) other impacts identified by the Public, agencies or USACE studies.

5. *Availability of the Draft EIS:* The Draft EIS is anticipated to be available for public review in the fall of 2004 subject to the receipt of federal funding.

6. *Authority:* The River and Harbor Act of 1946 authorized the development of the Arkansas River and its tributaries for the purposes of navigation, flood control, hydropower, water supply, recreation, and fish and wildlife. Public Law 91–649 stated that the project would be known as the McClellan-Kerr Arkansas River Navigation System. The Arkansas River Navigation Study began as a Fiscal Year (FY99) Congressional Add to investigate flooding problems along the Arkansas River in Crawford and Sebastian Counties in the vicinity of Fort Smith, AR.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13684 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–57–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement in Conjunction With Proposed Flood Control and Ecosystem Restoration Measures on the Upper Des Plaines River and Tributaries in Kenosha County, WI, and in Cook and Lake Counties, IL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Project involves construction of flood control and ecosystem restoration measures along the Upper Des Plaines River and Tributaries in Kenosha County, WI, and in Cook and Lake Counties, IL. Alternative plans are likely to include setback levees, retention ponds, dam modification, sediment traps, meander restoration, bank stabilization, wetland restoration, non-structural measures, and vegetative buffer strips.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Ryder, 312/353–6400 ext. 2020; U.S. Army Corps of Engineers, Suite 600, 111 North Canal Street; Chicago, IL 60606–7206.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement is expected to be released for public review in December 2004. Public scoping meetings will be held on the following dates:

(1) June 4, 2002, 7–9 PM—Kenosha County Center, 19600 75th Street, Bristol, WI.

(2) June 5, 2002, 7–9 PM—Byron Colby Barn at Prairie Crossing, Jones Point Road west of Route 45, Graylake, IL.

(3) June 6, 2002, 7–9 PM—Oakton Community College Conference Center, 1600 E. Golf Road, Des Plaines, IL.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13685 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF DEFENSE

Department of Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the Marina del Rey and Ballona Creek Sediment Control Management Plan Feasibility Study, Marina del Rey, Los Angeles County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the County of Los Angeles propose to prepare a sediment control management plan to reduce the sedimentation and contamination within Marina del Rey's navigation channels that result from Ballona Creek discharges. The Ballona Creek sediment control management plan is intended to act as a long-term solution to Marina del Rey's contaminated dredged material problem.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or preparation of the EIS/EIR may be directed to Mr. Paul Rose, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, P.O. Box

532711, Los Angeles, CA, 90053–2325, (213) 452–3840.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action:* Measures to control sediment discharges from Ballona Creek are needed because the Marina del Rey entrance channel suffers from sediment accretion, which inhibits navigation and makes periodic maintenance dredging necessary. The deposited sediment is contaminated with pollutants that originate from the Ballona Creek watershed. The elevated contaminant levels in entrance channel sediments make the disposal of dredge sediments problematic and expensive. The Corps has found it difficult to dredge the south entrance channel because of a lack of suitable disposal sites for the contaminated material. Because of the difficulty of properly maintaining the entrance channel, navigation safety may be threatened. Furthermore, resuspension of these sediments during dredging operations raises concerns of environmental impacts.

Control of contaminated sediments from Ballona Creek would help alleviate the problem of contaminated sediment dredging in the Marina del Rey Harbor entrance channel. A substantial reduction or elimination of the need to dispose of contaminated sediments would provide such benefits as improved water quality, decrease in maintenance dredging costs, and increased beach nourishment from the disposal of clean dredged sediments.

2. *Alternatives:* Alternatives that may be considered include selection of various sediment control measures including in-steam sediment basins, construction of a jetty extension, a combined in-steam sediment basin and jetty extension, and no-project.

3. *Scoping Process;* The Corps and the County of Los Angeles are preparing a joint environmental Impact Statement/ Environmental Impact Report (EIS/EIR) to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with National Environmental Policy Act (NEPA) for the project, and the County of Los Angeles is the Lead State Agency for compliance with the California Environmental Quality Act (CEQA) for the non-Federal aspects of the project. The Draft EIS/EIR (DEIS/EIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DEIS/EIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final EIS/EIR (FEIS/EIR) will address the comments received on the DEIS/EIR during public review, and will be furnished to all who commented on the DEIS.EIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal EIS, preparing a Record of Decision (ROD) and, for the state EIR, certifying the EIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FEIS/EIR.

The ROD can be published immediately after the FEIS public comment period ends. A certified EIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with the respect to CEQA. A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on June 4, 2002, at 10:00 A.M., in the Burton Chace Community Center, 13650 Mindanao Way, Marina del Rey, California.

Luz D. Ortiz,

Army Federal Register Liaison Office.

[FR Doc. 02–13688 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the San Diego Shoreline Feasibility Study, Oceanside, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers (USACE), DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District of the USACE will prepare a Draft Environmental Impact Statement (DEIS) to support the San Diego Shoreline Feasibility Study, Oceanside, California. The Study Area includes the shoreline between Oceanside Harbor and the Agua Hedionda Lagoon within the cities of Oceanside and Carlsbad in northwest San Diego County. The study area shoreline is approximately seven miles in length. The project environment includes predominantly beach, coastal strand and/or marine inter-tidal/littoral/ pelagic zones.

The predominant problem that threatens the shoreline is continual beach erosion averaging 1.1 meters per year, despite the considerable amount of beach fill deposited, (totaling approx. 2.3 million cubic meters), on a periodic basis. Causes for this erosion has been attributed to upcoast harbor construction, dam construction, storm damage, and river sand mining.

The loss of beach width and increased exposure of property has resulted in increased coastal damage, safety issues, and loss of recreation opportunities. This feasibility study will focus on addressing the problems and needs cause by beach erosion. The DEIS will analyze the potential impacts (beneficial and adverse) on the environment for the range of alternatives, including the recommended plan.

The Los Angeles District and the City of Oceanside will cooperate in conducting this Feasibility Study.

ADDRESSES: District Engineer, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RN (L. Young), PO Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Young, Environmental Coordinator, telephone (213) 452–3852, or Mr. Tony Risko, Chief, Coastal Studies, Group, telephone (213) 452–3833.

SUPPLEMENTARY INFORMATION:

1. Authorization

This Feasibility Study was authorized by the House Public Works and Transportation Committee Resolution adopted April 30, 1992 which states: ''Resolved by the Committee on Public Works and Transportation of the Unites States House of Representatives, that in accordance with Section 110 of the River and Harbor Act of 1962, the Secretary of the Army, acting through the Chief of Engineers, is requested to investigate the feasibility of providing shore protection improvements along the shores of the City of Oceanside, San Diego County, California, in the interest of shoreline protection and storm damage reduction and other related purposes.''

2. Background

During the 1880's Oceanside Beach was approximately 90 meters wide. This shoreline width was further advanced in the floods of 1889, 1891, and 1916 bringing large volumes of sediment from the San Luis Rey and Santa Margarita Rivers. The City used the widened beach as a resource, and in 1927 a recreational pier, beachfront, strand, parking lots and houses were constructed in front of the seacliff. During this period a dam was also constructed on the San Luis Rey River to control flooding. At the start of the U.S. involvement in World War II, the

U.S. Marine Corps designed and contracted construction of a small boat basin in a narrow lagoon between the Santa Margarita and San Luis Rey Rivers to support an amphibious training base. This included four jetties, which were later extended. Another dam was constructed on the Santa Margarita River to control flooding in 1949.

The presence of the coastal structures, such as jetties and breakwaters, has resulted in the disruption of sediment transport, creating a variety of localized shoreline effects. Sediment tends to accumulate at the beach north of the harbor, within the harbor entrance, and south of the harbor south jetty. However, erosion tends to occur downcoast of the labor. Damages reported by residents consist mainly of inundation damages and damages to revetment. These damages occur when storm wave conditions coincident with high tidal elevations or storm surge causes an elevated sea surface and higher wave run-up elevation. The majority of damages in Oceanside occurred during storms in 1977–1978, 1982–83, 1988, 1993–1994, and 1997–1998. In addition to high waves and water surface elevations, damage is intensified by shoreline erosion and beach retreat. Oceanside has historically experienced a narrow beach, but has recently undergone accelerated erosion. A large volume of material has been placed back on the beach during construction and maintenance dredging, but a deficit in sand for the beach still exists. The average recession of Oceanside Beach from 1940–1999 is approximately 60 meters or 1.1 m/yr. In 1974, the USACE issued a position paper on beach erosion that tentatively indicated that the harbor was the primary cause of erosion.

3. Alternatives

The Feasibility Study will focus on the problems and needs caused by beach erosion. In general, alternative plans will focus on reducing the beach erosion and improving sand accumulation through either construction or management project features such as groins, reefs, and/or dredge and disposal. Other features may include coordinated environmental enhancement of the lagoons or river mouths in the project area.

The primary undesirable impacts of concern from any of the alternatives will likely be related to temporary turbidity and displacement of sand dwelling organisms and their predators. These will be addressed in the study as part of the plan formulation of the Feasibility Study, and potential impacts will be analyzed in the DEIS.

4. Scoping Process

Participation of all interested Federal, State, and County agencies, groups with environmental interests, and any interested individuals is encouraged. Public involvement will be most beneficial and worthwhile in identifying the scope of pertinent, significant environmental issues to be addressed; identifying and eliminating from detailed study issues that are not significant; offering useful information such as published or unpublished data; providing direct personal experience or knowledge which informs decision making; and recommending suitable mitigation measures to offset potential impacts from the proposed action or alternatives.

5. Public Scoping Meeting

The specific date, location, and time of the public scoping meeting will be announced in the local news media at least two weeks prior to the meeting. A separate notice of this meeting will be sent to all parties on the study mailing list. The purpose of the scoping meeting will be to gather information from the general public or interested organizations about issues and concerns that they would like to see addressed in the DEIS. Comments may be delivered in writing or verbally at the meeting or sent in writing to the Los Angeles District at the address given above.

Dated: May 20, 2002.

Richard G. Thompson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 02–13683 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Hillsboro Aquifer Storage & Recovery Pilot Project adjacent to the Hillsboro Canal, Palm Beach County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps), intends to prepare an integrated Pilot Project Design Report and Draft Environmental Impact Statement (DEIS) for the Hillsboro Aquifer Storage and Recovery (ASR) Pilot Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the Hillsboro ASR Pilot Project. This project will determine the feasibility of using ASR technology for water storage, and the capacity and treatment capabilities of the impoundment and horizontal wells. It will also collect scientific data to address the uncertainties associated with the ASR technology and for future optimization and design studies.

FOR FURTHER INFORMATION CONTACT: Ms. Rebecca Weiss, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019, or by telephone at 904–899–5025.

SUPPLEMENTARY INFORMATION: a. *Authorization:* Section 101(a)(16) of the Water Resources Development Act of 1999 (WRDA 1999) (Pub. L. 106–53) authorized construction of the two pilot projects, Lake Okeechobee Aquifer Storage and Recovery (ASR) and Hillsboro ASR. Although these two pilot projects were authorized separate from the Central and Southern Florida Project, they are also integral elements of the Comprehensive Everglades Restoration Plan (CERP) as authorized in Title VI or WRDA 2000 (Pub. L. 105–541, Section 601). Therefore, these two projects were included in the CERP Design Agreement between the USACE and the local sponsor, the South Florida Water Management District (SFWMD) and required design studies are now proceeding.

b. *Project Scope:* The Pilot project will determine the feasibility of ASR technology for water storage at the site, the water quality characteristics of source waters, native subsurface waters and recovered waters and appropriate water treatment requirements, the efficiency of horizontal collection wells technology, and recommend operational goals for a full scale ASR project at the Hillsboro site. The pilot project includes the construction of 3 ASR wells into the upper Floridian Aquifer with design capacities of 5 million gallons a day per well, a 50-acre impoundment structure with a subsurface horizontal well seepage and groundwater collection system, pre-injection and post recovery water treatment facilities, and other associated piping, treatment systems, and monitoring wells between the surface collection and discharge sites.

Operational plans for the test pilot are to collect surface water from horizontal wells under the 50-acre impoundment, treat collected water to drinking water standards, and inject water into the

Floridan Aquifer System for a minimum of two cycle tests. Each cycle test includes a period of water storage followed by a period of recovery and discharge. Recovered water will be monitored and treated, if needed, to insure compliance with appropriate water quality standards prior to discharge into surface water or canal.

c. *Preliminary Alternatives:* Formulation of alternative plans will involve the selection of the most suitable site for the ASR wells, impoundment depth and configuration, collection well configuration, water treatment technologies, investigation of intake and discharge sites, and investigation of best configuration of surface facilities of the project.

The Environmental Impact Statement (EIS) evaluation of the pilot project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific technologic performance measures.

d. *Issues:* The EIS will consider impacts on water quality, ecosystem habitat, threatened and endangered species, health and safety, aesthetics and recreation, fish and wildlife resources, cultural resources, water availability, flood protection, and other potential impacts identified through scoping, public involvement, and interagency coordination.

e. *Scoping:* Initial project scoping began in January 2001 at a public meeting in Palm Beach County. Additional workshops have been held in West Palm Beach on January 2002 to identify additional public concerns related to ASR and regional implementation. A scoping letter will be issued in May 2002 to interested parties. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there is no plan for a public scoping meeting.

f. *Public Involvement:* We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

g. *Coordination:* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer.

h. *Other Environmental Review and Consultation:* The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements and right of ways, and determination of Coastal Zone Management Act consistency.

i. *Agency Role:* As cooperation agency, non-Federal sponsor, and leading local expert, SFWMD will provide information and assistance on the resources to be impacted and alternatives.

j. *DEIS Preparation:* The integrated Pilot Project Design Report, including a DEIS, is currently estimated for publication in June 2003.

Dated: May 15, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–13687 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement on the Future Dredging of Capron Shoal for the Fort Pierce Shore Protection Project in St. Lucie County, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Jacksonville District intends to prepare a Draft Environmental Impact Statement (DEIS) for further dredging at Capron Shaol to renourish the Fort Pierce Shore Protection Project (SPP) in St. Lucie County, FL.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lang Jr., U.S. Army Corps of Engineers, Planning Division, Environmental Branch, PO Box 4970, Jacksonville, FL, 32232–0019, by e-mail *William.j.lang@usace.army.mil,* or by telephone at 904–232–2615.

SUPPLEMENTARY INFORMATION:

a. *Project background and Authorization.* Fort Pierce Inlet, originally cut by local interests in 1921, affects the littoral transport of sand north and south of the inlet. The north has accreted while there's been a significant loss of sand to the south. Accordingly, the Fort Pierce SPP, authorized by the River and Harbor Act of 1965, provided for restoration of 1.3 miles of shoreline south of Fort Pierce Inlet and for subsequent periodic renourishment as needed. Since 1971 more than 2 million cubic yards (cy) of beach nourishment and maintenance dredge sand has been placed on the beach. The project provides for a fifty-foot protective berm extending 1.3 miles south of Fort Pierce Inlet. Extension of the project an additional one mile has been addressed in the Environmental Assessment (EA) dated August 1998. Groins are being considered for the eroding area south of the inlet and will be addressed in an EA.

b. *Need or Purpose.* This Environmental Impact Statement (EIS) evaluates the potential impacts of further dredging of Capron Shoal. The environmental analysis will incorporate the results of studies/surveys of bryozoans, reef (hard bottom) and borrow area impacts. This EIS fulfills term and condition 4 of the March 12, 1999 Joint Stipulation for Entry of Dismissal of the Case Winston, et al., vs. Lt. Gen. Ballard.

c. *Proposed Solution and Forecast completion Date.* Sand dredged from Capron Shoal would be used for placement on the Ft. Pierce Beach SPP as needed and appropriate.

d. *Prior EAs, EISs.* EAs were completed in 1998; 1993-revised 94 & 95 and in 1978 specifically for the nourishment of Ft. Pierce Beach SPP. In addition to National Environmental Policy Act (NEPA) documents prepared specifically for the Ft. Pierce Beach SPP; a 1993 EIS associated with the widening/deepening of the Ft. Pierce navigation channel; and, EAs for channel maintenance dredging were also prepared when sand from the channel was to be placed on Fort Pierce Beach.

e. *Alternatives.* A reevaluation of alternatives, including structural alternatives to minimize the frequency and extent of dredging and beach placement will be done. Alternatives will include the No Action alternative. This EIS will analyze reasonable alternatives to dredging at Capron Shoal, including potential alternatives that would avoid or minimize the need for dredging.

f. *Issues.* Those issues identified in b above shall be addressed in depth as well as the effects on Federally listed threatened and endangered species, essential fish habitat and community response to beach restoration impacts. Additionally, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts

identified through scoping, public involvement, and interagency coordination will be discussed.

g. *Scoping Process.* A scoping meeting is not scheduled. The public will be involved in the planning process through mail solicitations and advisements. As a minimum, all parties who have expressed interest in the Fort Pierce SPP will be invited to participate in the planning process. Federal, state and local agencies, and other interested groups will also be involved. Meetings to address discrete issues or parts or functions of the study area may be called.

h. *Public Involvement.* We invite the participation of affected Federal, state and local agencies, other interested private organizations, parties and the public.

i. *Coordination.* The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act, with the NMFS concerning Essential Fish Habitat and with the State Historic Preservation Officer.

j. *Other Environmental Review and Consultation.* The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

k. *Agency Role.* The Corps and the non-Federal sponsor, St. Lucie County, will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

l. *DEIS Preparation.* It is estimated that the DEIS will be available to the public on or about June 2002.

Dated: May 21, 2002.

James C. Duck,

Chief, Planning Division.

[FR Doc. 02–13682 Filed 5–30–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of revision of the Federal need analysis Methodology for the 2003–2004 award year.

SUMMARY: The Secretary of Education announces the annual updates to the tables that will be used in the statutory ''Federal Need Analysis Methodology'' to determine a student's expected family contribution (EFC) for award year 2003–2004 under Part F of Title IV of the Higher Education Act (HEA) of 1965, as amended, Title IV, HEA Programs. An EFC is the amount a student and his or her family may reasonably be expected to contribute toward the student's postsecondary educational costs for purposes of determining financial aid eligibility. The Title IV, HEA Programs include the Federal Pell Grant, campus-based (Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs), Federal Family Education Loan, and William D. Ford Federal Direct Loan Programs.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20002–5345. Telephone: (202) 377–3231.

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SUPPLEMENTARY INFORMATION: Part F of Title IV of the HEA specifies the criteria, data elements, calculations,and tables used in the Federal Need Analysis Methodology EFC calculations.

Section 478 of Part F of the HEA requires the Secretary to adjust four of the tables—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates—each award year to take into account inflation. The changes are based, in general, upon increases in the Consumer Price Index.

For the award year 2003–2004 the Secretary is charged with updating the income protection allowance, adjusted net worth of a business or farm, and the assessment schedules and rates to account for inflation that took place between December 2001 and December 2002. However, since the Secretary must publish these tables before December 2002, the increases in the tables must be based upon a percentage equal to the estimated percentage increase in the Consumer Price Index for all Urban Consumers for 2001. The Secretary estimates that the increase in the Consumer Price Index for all urban Consumers for the period December 2001 through December 2002 will be 2.8 percent. The updated tables are in sections 1, 2, and 4 of this notice.

The Secretary must also revise, for each award year, the table of asset protection allowances as provided for in section 478 (d) of the HEA. The Education Savings and Asset Protection Allowance table for the award year 2003–2004 has been updated in section 3 of this notice.

Section 477(B)(5) of Part F of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for a two-earner compared to a one-earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services. Therefore, the Secretary is increasing this allowance as described in section 5 of this notice.

The HEA provides for the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. It varies by family size and number in college. The income protection allowance for the dependent student is $2,380. The income protection allowances for parents of dependent students and independent students with dependents other than a spouse for award year 2003–2004 are:

	Number in College—				
	1	2	3	4	5
Family size:					
2	13,470	11,160	.....	.....	.....
3	16,770	14,480	12,170	.....	.....
4	20,710	18,410	16,120	13,810	.....
5	24,440	22,130	19,840	17,540	15,240
6	28,580	26,280	23,900	21,680	19,390

For each additional family member add $3,230.
For each additional college student substract $2,290.

The income protection allowances for single independent students and for independent students without dependents other than a spouse for award year 2003–2004 are:

Marital status	Number in college	Amount
Single	1	$5,400
Married	2	5,400

Marital status	Number in college	Amount
Married	1	8,640

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full net value of a farm or business is excluded from the calculation of an expected contribution since—(1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets. The portion of these assets included in the contribution calculation is computed according to the following schedule.

This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1 to $95,000	$0 + 40% of NW
$95,001 to $290,000	$38,000 + 50% of NW over $95,000
$290,001 to $480,000	$135,000 + 60% of NW over $290,000
$480,001 or more	$249,500 + 100% of NW over $480,000

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of net worth (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables—one of parents of dependent students, one for independent students without dependents other than a spouse, and one for the independent students with dependents other than a spouse.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are	
	two parents	one parent
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,200
27	5,000	2,500
28	7,500	3,700
29	9,900	5,000
30	12,400	6,200
31	14,900	7,400
32	17,400	8,700
33	19,900	9,900
34	22,400	11,200
35	24,900	12,400
36	27,400	13,600
37	29,800	14,900
38	32,300	16,100

DEPENDENT STUDENTS—Continued

If the age of the older parent is—	And there are	
	two parents	one parent
39	34,800	17,400
40	37,300	18,600
41	38,200	19,000
42	39,200	19,400
43	40,200	19,800
44	41,200	20,300
45	42,200	20,700
46	43,300	21,100
47	44,300	21,600
48	45,400	22,200
49	46,600	22,600
50	47,700	23,100
51	49,200	23,700
52	50,400	24,200
53	51,700	24,800
54	53,200	25,400
55	54,500	26,200
56	56,200	26,800
57	57,900	27,400
58	59,600	28,200
59	61,400	28,900
60	63,200	29,700
61	65,100	30,500
62	67,300	31,200
63	69,200	32,100
64	71,600	33,100
65 and over	74,000	34,100

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is—	And the student is	
	married	single
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,200
27	5,000	2,500
28	7,500	3,700
29	9,900	5,000
30	12,400	6,200
31	14,900	7,400
32	17,400	8,700
33	19,900	9,900
34	22,400	11,200
35	24,900	12,400
36	27,400	13,600
37	29,800	14,900
38	32,300	16,100
39	34,800	17,400
40	37,300	18,600
41	38,200	19,000
42	39,200	19,400
43	40,200	19,800
44	41,200	20,300
45	42,200	20,700
46	43,300	21,100
47	44,300	21,600
48	45,400	22,200
49	46,600	22,600
50	47,700	23,100
51	49,200	23,700

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is—	And the student is	
	married	single
52	50,400	24,200
53	51,700	24,800
54	53,200	25,400
55	54,500	26,200
56	56,200	26,800
57	57,900	27,400
58	59,600	28,200
59	61,400	28,900
60	63,200	29,700
61	65,100	30,500
62	67,300	31,200
63	69,200	32,100
64	71,600	33,100
65 and over	74,000	34,100

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the Age of the student is—	And the student is	
	married	single
	then the education savings and asset protection allowance is—	
25 or less	0	0
26	2,500	1,200
27	5,000	2,500
28	7,500	3,700
29	9,900	5,000

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the Age of the student is—	And the student is	
	married	single
30	12,400	6,200
31	14,900	7,400
32	17,400	8,700
33	19,900	9,900
34	22,400	11,200
35	24,900	12,400
36	27,400	13,600
37	29,800	14,900
38	32,300	16,100
39	34,800	17,400
40	37,300	18,600
41	38,200	19,000
42	39,200	19,400
43	40,200	19,800
44	41,200	20,300
45	42,200	20,700
46	43,300	21,100
47	44,300	21,600
48	45,400	22,200
49	46,600	22,600
50	47,400	23,100
51	49,200	23,700
52	50,400	24,200
53	51,700	24,800
54	53,200	25,400
55	54,500	26,200
56	56,200	26,800
57	57,900	27,400
58	59,600	28,200
59	61,400	28,900
60	63,200	29,700
61	65,100	30,500

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE—Continued

If the Age of the student is—	And the student is	
	married	single
62	67,300	31,200
63	69,200	32,100
64	71,600	33,100
65 and over	74,000	34,100

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates, one for dependent students and one for independent students with dependents other than a spouse, are used to determine the expected contribution toward educational expenses from family financial resources. For dependent students, the expected parental contribution is derived from an assessment of the parents adjusted available income (AAI). For independent students with dependents other than a spouse, the expected contribution is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—	
Less than −$3,409 ($3,409)	−$750	
($3,409) to $12,000		22% of AAI
$12,001 to $15,100	$2,640 +	25% of AAI over $12,000
$15,101 to $18,200	$3,415 +	29% of AAI over $15,100
$18,201 to $21,200	$4,314 +	34% of AAI over $18,200
$21,201 to $24,300	$5,334 +	40% of AAI over $21,200
$24,301 or more	$6,574 +	47% of AAI over $24,300

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is—	Then the contribution is—	
Less than −$3,409 ($3,409)	−$750	
($3,409) to $12,000		22% of AAI
$12,001 to $15,100	$2,640 +	25% of AAI over $12,000
$15,101 to $18,200	$3,415 +	29% of AAI over $15,100
$18,201 to $21,200	$4,314 +	34% of AAI over $18,200
$21,201 to $24,300	$5,334 +	40% of AAI over $21,200
$24,301 or more	$6,574 +	47% of AAI over $24,300

5. *Employment Expense Allowance.* This allowance for employment-related expenses, which is used for the parents of dependent students and for married independent students with dependents, recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for a two wage-earner family compared to a one-wage earner family for meals away from home, apparel and upkeep, transportation, and housekeeping services.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $3,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* This allowance for State and other taxes protects a portion of the parents' and student's income from being considered available for postsecondary educational expenses. There are four tables for State and other taxes, one each for parents of dependent

students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If parents' State or territory of residence is—	And parents' total income is—	
	less than $15,000	$15,000 or more
	Then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory for residence is—	And student's total income is—	
	less than $15,000	$15,000 or more
	Then the percentage is—	
Wyoming, Tennessee, Nevada, Alaska, Texas	3	2
Louisiana, Florida, Washington, South Dakota	4	3
Alabama, Mississippi	5	4
North Dakota, Illinois, Connecticut, New Mexico, Missouri, West Virginia, Arizona, Indiana, Oklahoma, Arkansas	6	5
New Hampshire, Pennsylvania, Colorado, Georgia, Kansas, Kentucky, Idaho	7	6
North Carolina, Virginia, Delaware, South Carolina, Ohio, Utah, Nebraska, Montana, California, New Jersey, Iowa, Vermont, Hawaii	8	7
Massachusetts, Rhode Island, Michigan, Minnesota, Maine, Maryland	9	8
District of Columbia, Wisconsin, Oregon	10	9
New York	11	10
Other	4	3

DEPENDENT STUDENTS

If student's State or territory of residence is—	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If student's State or territory of residence is—	The percentage is—
Alaska, Texas, South Dakota, Wyoming, Washington, Tennessee, Nevada	0
Florida, New Hampshire	1
Connecticut, Louisiana, Illinois, North Dakota	2
Mississippi, Arizona, Alabama, Pennsylvania, New Jersey, Missouri	3

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

If student's State or territory of residence is—	The percentage is—
Nebraska, Indiana, Colorado, New Mexico, Oklahoma, Kansas, West Virginia, Rhode Island, Virginia, Georgia, Arkansas, Vermont, Michigan	4
Montana, Idaho, Utah, Kentucky, Massachusetts, California, North Carolina, South Carolina, Ohio, Iowa, Delaware, Maine, Wisconsin	5
Oregon, Maryland, Minnesota, Hawaii	6
District of Columbia, New York	7
Other	2

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; William D. Ford Federal Direct Loan Program, 84.268)

Dated: May 28, 2002.

Candy Kane,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. 02–13704 Filed 5–30–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Scoping Meetings for Radioisotope Thermoelectric Generator Relocation Environmental Assessment (EA)

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Department of Energy (DOE, the Department) is announcing its intent to prepare an Environmental Assessment (EA) to assess the environmental impacts related to determining the future location of the Department's Heat Source/Radioisotope Power System (HS/RPS) assembly and test operations. The HS/RPS operations include those identified as HS/Radioisotope Thermoelectric Generator (HS/RTG) operations in prior NEPA documents. These activities are currently conducted at the Mound site near Miamisburg, Ohio. The EA will evaluate continuation of the HS/RPS operations in the currently used facilities (the No Action alternative) or alternative facilities at the Mound site. Alternative sites to be evaluated in the EA include the Pantex Plant (Pantex), near Amarillo, Texas, and the Argonne National Laboratory-West located on the Idaho National Engineering and Environmental Laboratory site, near Idaho Falls, Idaho. Any other reasonable site(s) identified during the scoping will also be evaluated in the EA. This EA will be prepared in accordance with the Council on Environmental Quality's NEPA Implementing Regulations at 40 CFR parts 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, and 1508, and the Department's NEPA Implementing Procedures at 10 CFR part 1021.

The potential relocation of the HS/RTG assembly and test operations was previously evaluated in 1998. The Department issued a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the **Federal Register** on October 2, 1998. While the draft EIS was under preparation, the Department determined that no benefit would result from relocation of the HS/RPS mission and consolidated operations in an optimum configuration at the Mound site. The potential environmental impacts of these consolidation activities at the Mound site were assessed in the *Environmental Assessment for the Consolidation of Heat Source/Radioisotope Thermoelectric Generator (HS/RTG) Assembly and Testing Operations at Mound* (DOE/EA–1343, April 2000). As explained in the supplementary information below, in consideration of the events of September 11, 2001, the Department now considers it appropriate to review the location of the HS/RPS operations in the context of new requirements. The information gathered during preparation of the aforementioned EA revealed the absence of any significant impacts due to the HS/RPS activities. Therefore, the Department believes that initially an EA should be prepared to evaluate future location for the HS/RPS operations. Based on the analysis of potential environmental impacts in the EA, the Department will issue either a Finding of No Significant Impact or a NOI to prepare an EIS. The Department is inviting comments from the public and the Federal, State, Tribal, and local agencies on the consideration of future locations for these operations and scope of the EA. A preferred alternative would be identified in the draft EA after analysis of alternatives and consideration of the comments received during the scoping period.

DATES: The public scoping period begins with the publication of this Notice and will continue for 21 days. Comments received or postmarked by that date will be considered in the preparation of the EA. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: The Department will conduct public meetings to solicit comments on the consideration of future locations for these operations and the scope of the EA as follows:

June 18, 2002—Washington, DC Metropolitan Area, 7:00pm to 9:00pm, Monroe/Arlington Rooms, Days Inn Crystal City, 2000 Jefferson Davis Highway, Arlington, VA.

June 20, 2002—Miamisburg, OH, 7:00pm to 9:00pm, Carnegie Center, Lower Level Room, 426 East Central Avenue, Miamisburg, OH.

June 24, 2002—Amarillo, TX, 7:00pm to 9:00pm, Oak Room, College Union Building, Washington Street Campus, Amarillo College, 24th and Jackson Streets, Amarillo, TX.

June 26, 2002–Idaho Falls, ID, 7:00pm to 9:00pm, Grand Teton Room, Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, ID.

These meetings will also be advertised in the local media.

FOR FURTHER INFORMATION CONTACT: Please direct comments on the proposed relocation and scope of the EA, requests for copies of the EA, and questions concerning the project to: Mr. Timothy A. Frazier, U.S. Department of Energy, P.O. Box 66, Miamisburg, OH 45343–0066, Telephone: (937) 865–3748, Facsimile (937) 865–4489, Electronic mail: *Tim.Frazier@hq.doe.gov.* For general information on DOE's NEPA process, please contact Ms. Carol Borgstrom, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585, telephone (202) 586–4600 or leave message at 1–(800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE and its predecessor agencies have been developing HS/RPSs and supplying them to user agencies for more than 35 years. The radioisotope used in these systems is plutonium-238 (Pu-238), a non-fissile, non-weapons-usable form. A HS/RPS converts thermal energy that is generated by the spontaneous radioactive decay of Pu-238 to electrical energy. These systems have demonstrated their value as key technologies in various harsh, remote, and inaccessible environments, such as space, where it is impractical to provide the fuel and maintenance that conventional electrical power sources would need. The HS/RPS assembly and test operations have been conducted at the Department's Mound site for over 15 years. The HS/RPS assembly and test operations are contained in one building at the Mound site. The HSs are assembled in glove boxes (large enclosures that separate workers from equipment used to process hazardous and nuclear materials while allowing the workers to be in physical contact with the equipment) using parts manufactured or procured by the Mound site and encapsulated Pu-238 shipped from the Los Alamos National Laboratory in New Mexico. The RPSs are assembled in a large inert atmosphere chamber and then tested.

The Mound site was established in 1946 as the first permanent installation associated with the Atomic Energy Commission. Until the early 1990s, the Mound site manufactured critical nuclear weapons components. The site is currently being environmentally restored under a Comprehensive Environmental Response, Compensation and Liability Act Section 120 agreement. DOE plans to complete the environmental restoration and release the site for public use by February 2006. It is anticipated that the future use of the site will involve establishment of an industrial park.

Purpose and Need

It is DOE's responsibility to maintain the availability of HS/RPS for other Federal agencies, as needed. The radioisotope Pu-238 used in the assembly of HS/RPS is a special nuclear material requiring security and safeguards. As long as other programs requiring security and safeguards were also conducted the security costs at the site were spread among all such programs. However, once the site is cleaned up and released for public use, HS/RPS operations would be the only such DOE program remaining at the site, and all of the security costs would then have to be borne by that program. In 1999, the Department consolidated HS/RPS operations in a single building to minimize the security and safeguards costs. However, due to additional security measures for the special nuclear materials necessitated by the terrorist attacks of September 11, 2001, those costs have increased considerably. These security costs could render continuation of the program, as currently configured at the Mound site, impractical. Hence the Department proposes to evaluate modifications to its HS/RPS operations at the Mound site as well as alternative DOE sites which already have the added security/safeguards infrastructure in place for other ongoing programs and which would also have facilities suitable for the transfer of assembly and test operations for HS/RPSs.

The EA will analyze the potential environmental impacts associated with the HS/RPS operations at Mound and each of the alternative sites, including any other reasonable site(s) identified during scoping, as well as the transportation routes associated with alternative sites. The following issues have been tentatively identified for analysis in the EA: health and safety, waste management, pollution prevention, hazardous materials, radiation materials, water resources, air quality, earth resources, land use, infrastructure, transportation, noise, ecological resources, cultural resources, socioeconomics, and environmental justice. This list is neither intended to be all-inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comment on the scope of the EA.

The purpose of this Notice is to encourage public involvement in the NEPA process and to solicit comments on the proposed scope of the EA and the potential environmental impacts of the alternatives. Comments will be considered in preparation of the EA, which is expected to be issued for public and agency comments in July 2002. The Department will finalize the EA and decide whether to issue a Finding of No Significant Impact or prepare an EIS.

Issued in Washington, DC, May 24, 2002.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 02–13648 Filed 5–30–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 20, 2002, 5:30 p.m.–9:00 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Introductions; Approve May Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- Budget Update
- ES & H Issues
- EM Project Updates
- CAB Recommendation Status
- Other

6:30 p.m.—Ex-officio Comments
6:40 p.m.—Public Comments and Questions
6:50 p.m.—Action Item Review
7:05 p.m.—Break
7:10 p.m.—Presentations
- Environmental Review by Southern Illinois Univ. Students

8:10 p.m.—Break
8:20 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Nomination and Membership/ Public Involvement

9:05 p.m.—Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Federal Coordinator Comments

9:20 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–382–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC, on May 28, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–13735 Filed 5–30–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, June 15, 2002, 8:30 p.m.—12:00 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Hamilton, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or (513) 648–6478, or e-mail; *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to Order
8:30—8:45 a.m.—Chair's Remarks and Ex Officio Announcements
8:45—9:30 a.m.—Update on Site Acceleration Activities
9:30—10:30 a.m.—Silos Update
10:30—10:45 a.m.—Break
10:45—11:30 a.m.—Budget and Schedule for Long-Term Stewardship and Records Disposition
11:30—11:45 a.m.—Results of Design Charrette and Next Steps
11:45—12:00 p.m.—Public Comment
12:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on May 28, 2002.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–13736 Filed 5–30–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB review; Comment request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by July 1, 2002. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–882T, ''Generic Clearance for Questionnaire Testing and Research''.
2. Energy Information Administration.
3. OMB Number 1905–0186.
4. Three-year approval requested.
5. Voluntary.
6. The EIA–882T is used to conduct pretest/pilot surveys (face-to-face interviews, telephone interviews, mail questionnaires, electronic questionnaires), focus groups, and cognitive interviews. Data are used to modify questionnaires to improve the quality of data. Samples of potential respondents to proposed surveys are selected to participate.
7. Individuals or households; Business or other for-profit; Not-for profit institutions; Farms; Federal Government; and State, Local or Tribal Government.
8. 1,000 hours (4,000 respondents × response per year × .25 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, May 28, 2002.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 02–13649 Filed 5–30–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC02–510–000]

Proposed Information Collection and Request for Comments

May 24, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No.104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before July 30, 2002.

ADDRESSES: Written comments on the proposed collection of information may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425 and by E-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–510, ''Application for Surrender of Hydropower License'' (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of Sections 4(e), and 6 and 13 of the Federal Power Act (FPA), 16 U.S.C. Sections 797(e), 799 and 806. Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other power project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe conditions of the licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC–510 is in the form of a written application for a surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such a surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for Surrender of a License. The order is the result of an analysis of the information produced, i.e., economic, environmental concerns, etc., which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 6.1–6.4.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents	Annual responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
8	1	10	80

Estimated cost burden to respondents is $4,502; (*i.e.*, 80 hours divided by 2,080 hours per full time employee per year multiplied by $117,041 per year equals $4,502).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than anyone particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information *technology, e.g.,* permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13663 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–340–000]

ANR Pipeline Company; Notice of Tariff Filing

May 24, 2002.

Take notice that on May 14, 2002, ANR Pipeline Company (''ANR'') filed tariff sheets that provide for contract demand reduction rights under specified circumstances. The proposed tariff would allow shippers to elect from four types of contract demand reduction options if they meet specified eligibility requirements. These options are designed to address specified circumstances that may result in the need for a shipper to reduce its contract demand. They include (1) a Loss of Load; (2) a Plant Outage; and (3) a Regulatory Unbundling Order. ANR has also included a fourth option for shippers that are captive to ANR for transportation service (''Sole Supply Customers'') to reduce specified levels of contract demand for any reason. ANR proposes an effective date of June 15, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13680 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–321–001 and RP01–86–001]

Destin Pipeline Company, L.L.C.; Notice of Compliance Filing

May 24, 2002.

Take notice that on May 10, 2002, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets as listed on Appendix A attached to the filing.

Destin states that purpose of this filing is to comply with the Commission's Order on Compliance with Order Nos. 637, 587-G, and 587-L issued on April 12, 2002.

A copy of this filing is available for public inspection during regular business hours at Destin's offices at 501 WestLake Park Boulevard, Houston, Texas 77079–2696. In addition copies of this filing are being served on all parties to the proceedings in Docket Nos. RP00–321–001 and RP01–86–001, affected shippers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This

filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13672 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–24–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

May 24, 2002.

Take notice that on May 14, 2002, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective June 1, 2002:

Thirteenth Revised Sheet No. 94

states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13662 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–009]

Dominion Transmission, Inc.; Notice of Addendum to Report of Refunds

May 24, 2002.

Take notice that on May 8 and May 13, 2002, Dominion Transmission, Inc. (DTI) filed an addendum and an errata to the addendum to the report of refunds originally filed on February 26, 2002, the above-captioned proceeding. DTI states that the reported refunds and billing adjustments reflect DTI's implementation of the TCRA settlement in the above-captioned proceeding.

DTI states that the purpose of these filings is to correct certain entries in the refund report that DTI previously filed with the Commission. Mistakes were made in the original filing due to a programming anomaly in the allocation process that was not discovered before the original refund report was filed.

DTI states that copies of its report and summary workpapers are being mailed to affected customers, interested state commissions and all parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13677 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–3615–002]

Drew River Mill, Inc.; Notice of Site Review

May 24, 2002.

Drew River Mill, Inc. (DRMI), licensee for the Branch River Mill Project (Project), requests to surrender its exemption from licensing for the existing, non-operational Project. On June 20, 2002, the staff of the Office of Energy Projects (OEP) will conduct a site review of the Project. Representative(s) of DRMI will accompany the OEP staff. All interested parties may meet at 9:30 A.M. at the Project dam. Attendees must provide their own transportation.

For further information, please contact the Commission's Office of External Affairs at (202) 208–1088.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13666 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–233–000]

Equitrans, L.P., Carnegie Interstate Pipeline Company; Notice of Application

May 24, 2002.

On May 20, 2002, the affiliated interstate natural gas pipelines, Equitrans, L.P. (Equitrans) and Carnegie Interstate Pipeline Company (CIPCO), located at 100 and 150 Allegheny Center Mall, Pittsburgh, Pennsylvania 15212–5331, respectively, tendered for filing an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act for authorization permitting Equitrans to acquire and operate by merger CIPCO's gas pipeline services and facilities, and for authorization permitting CIPCO to abandon such services and facilities, all as more fully explained in the application. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call (202) 208–2222 for assistance).

Any questions regarding this application should be directed to Fredrick K. Dalena, Vice President, Administration, Equitrans, L.P., 100 Allegheny Center Mall, Pittsburgh, Pennsylvania 15212, at (412) 395–3270.

Applicants state that no new construction is proposed in the application. Further, Applicants state that upon Commission approval of the application, Equitrans proposes to operate the merged facilities under the open access provisions of its existing FERC Gas Tariff. Applicants state that the merger will be reflected at the net utility plant balance of the CIPCO assets to be merged into Equitrans.

Applicants state that Equitrans' existing customers will experience no impact on the settlement rates that are currently in effect. Applicants further state that the transportation services performed by the merged facilities will continue to be charged the same rate as under CIPCO's current FERC Gas Tariff until Equitrans' next general section 4 rate proceeding, which is required by settlement to be filed in 2003. Accordingly, CIPCO's existing customers also will not experience any impact on the currently effective rates.

There are two ways to become involved in the Commission's review of this abandonment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this abandonment should, on or before June 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this abandonment. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the abandonment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this abandonment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying the application will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13660 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–012]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

May 24, 2002.

Take notice that on May 10, 2002, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing an original and six copies of the following tariff sheets, to be effective June 1, 2002:

Fourth Revised Volume No. 1–A

Sixth Revised Sheet No. 4G
Second Revised Sheet No. 4I

The above-referenced tariff sheets reflect a negotiated rate contract effective June 1, 2002. The tariff sheets are being filed pursuant to Section 36 of KMIGT's FERC Gas Tariff Fourth Revised Volume No. 1–A, and the procedures prescribed by the Commission in its December 31, 1996 ''Order Accepting Tariff Filing Subject to Conditions'', in Docket No. RP97–81 (77 FERC ¶ 61,350) and the Commission's Letter Orders dated March 28, 1997 and November 30, 2000 in Docket Nos. RP97–81–001, and RP01–70–000, respectively.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for

assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13671 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–134–001]

Maritimes and Northeast Pipeline L.L.C.; Notice of Compliance Filing

May 24, 2002.

Take notice that on May 15, 2002, Maritimes and Northeast Pipeline, L.L.C. (Maritimes) tendered for filing a supplement to its cost and revenue study filed with the Commission on December 27, 2001, pursuant to the Commission letter order issued April 25, 2002, in this proceeding.

Maritimes states that copies of the filing are being served to all parties in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13679 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–18–000]

Nicor Gas; Notice of Petition for Rate Approval

May 24, 2002.

Take notice that on May 1, 2002, Nicor Gas (Nicor) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation and storage services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA). Nicor proposes an effective date of May 1, 2002.

Nicor states that it is an intrastate gas distribution company providing services under the blanket certificate issued to it in Docket No. CP92–481–000. Nicor owns and operates transportation and storage facilities in the State of Illinois.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before June 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13667 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–35–001 and RP01–92–001]

Norteño Pipeline Company; Notice of Tariff Compliance Filing

May 24, 2002.

Take notice that on May 13, 2002, Norteño Pipeline Company (''Norteño''), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following *pro forma* tariff sheets:

Pro Forma Sheet No. 252
Pro Forma Sheet No. 257

Norteño states that these *pro forma* tariff sheets reflect the limited changes to its tariff that are required to comply with the Commission's April 12, 2002 Order.

Norteño states that copies of this filing have been served on Norteño's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13678 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–041]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 24, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 14, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheet proposed to be effective on May 15, 2002:

Fifth Revised Volume No. 1

20 Revised Sheet No. 66A

The above sheet is being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13669 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–042]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 24, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 13, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheet proposed to be effective on May 14, 2002:

Fifth Revised Volume No. 1

Nineteenth Revised Sheet No. 66A

The above sheet is being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13670 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–005]

Northern Natural Gas Company; Notice of Compliance Filing

May 24, 2002.

Take notice that Northern Natural Gas Company (Northern), on May 10, 2002, tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following pro forma tariff sheets:

Pro Forma Fifth Revised Volume No. 1

Tenth Revised Sheet No. 201
Third Revised Sheet No. 304
Second Revised Sheet No. 305
Sheet No. 306

Northern states it is supplementing its Order No. 637 compliance filing proposal by: (1) Implementing a virtual segmentation proposal on Northern's system; (2) applying the Commission's CIG discount policy; and (3) setting forth the timing for certain computer modifications as set forth herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13673 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–470–001 and RP00–612–001]

Sea Robin Pipeline Company; Notice of Compliance Filing

May 24, 2002.

Take notice that on May 13, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets as listed on Appendix A attached to the filing.

Sea Robin states that the purpose of this filing is to comply with the Commission's Order on Compliance With Order Nos. 637, 587–G, and 587–L issued on April 12, 2002.

Sea Robin states that a copy of this filing is available for public inspection during regular business hours at Sea Robin's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13675 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–229–000, CP02–230–000 and CP02–231–000]

SG Resources Mississippi, L.L.C.; Notice of Application

May 24, 2002.

Take notice that on May 17, 2002, SG Resources Mississippi L.L.C. (SGRM), 7500 San Felipe, Suite #600, Houston, Texas 77063 filed in Docket Nos. CP02–229–000, CP02–230–000 and CP02–231–000 an application pursuant to Section 7(c) of the Natural Gas Act and Parts 284 and 157 of the Commission's Regulations for a certificate of public convenience and necessity to construct, own and operate a natural gas storage facility subject to the jurisdiction of the Commission, to provide open-access firm and interruptible storage services and to engage in certain routine activities, all as more fully set forth in the application which is on file with the Commission and open to 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).

Specifically, SGRM seeks (1) a certificate of public convenience and necessity that would authorize SGRM to construct, own, operate and maintain a high-deliverability salt-dome gas storage facility that will accommodate the injection, storage and subsequent withdrawal of natural gas for redelivery in interstate commerce; (2) a blanket certificate pursuant to Subpart G of Part 284 that will permit SGRM to provide open-access firm and interruptible natural gas storage services on behalf of others in interstate commerce with pre-granted abandonment of such services; (3) a blanket certificate pursuant to Subpart F of Part 157 that will permit SGRM to construct, acquire, operate, rearrange and abandon certain facilities following construction of the proposed project; (4) authorization to provide the proposed storage services at market-based rates; and (5) approval of a pro forma FERC Gas Tariff, pursuant to which SGRM will provide open access natural gas storage services in interstate commerce consistent with Order Nos. 636 and 637. SGRM also requests that the Commission waive the requirements of (i) Sections 157.6(b)(8) and 157.14(a), (13), (14), (16) and (17) which relate to the filing of information required to justify rates on a cost-of-service basis, given that SGRM proposes to charge market-based rates for the services it will provide; (ii) Section 157.14 (a)(10) which requires a showing regarding accessible gas supplies that is not applicable to a storage project to which third parties will deliver their gas; (iii) Section 260.2 and Part 201 which are accounting and reporting requirements appropriate for cost-of-service rate structure; and (iv) Sections 284.7(e) and 284.10 which impose requirements relating to the design of rates that are not applicable to market-based rates.

SGRM states that it is a new company which seeks authorization to construct and operate the proposed storage facility to accommodate the injection, storage and subsequent withdrawal of natural gas for redelivery in interstate commerce. SGRM maintains that the Southern Pines Energy Center Project would help support service to growing peak winter heating and summer cooling loads in the U.S. Southeast and Mid-Atlantic regions, increase the reliability of natural gas supply during periods of production and transportation interruptions, enhance the interstate pipeline grid's ability to serve new gas-fired electric generation, and facilitate the continued growth of local distribution companies serving Southeast and Mid-Atlantic energy markets. SGRM states that the proposed project will provide approximately 12.0 Bcf of working gas storage capacity in two salt caverns, with 1.2 Bcf per day of maximum deliverability and up to 0.6 Bcf per day of injection capabilities. SGRM states that the caverns will be created in a domal salt structure, known as the Byrd Dome, in Greene County, Mississippi. SGRM states that the project will include a Gas Handling Facility designed to utilize four gas engine-driven compressors of 8,000 hp each. It is stated that an interconnecting pipeline, consisting of two 24-inch pipelines approximately 3.13 miles long, will be constructed from the Gas Handling Facility to a point of connection with the facilities of Destin Pipeline Company, L.L.C. Further, SGRM states that the infrastructure required to support cavern development will include water supply and brine disposal wells, associated pumping and piping systems and non-jurisdictional temporary gas-fired electric generation facilities.

SGRM asserts that in a recently concluded open season, SGRM received requests for service for more than 34 Bcf of capacity. SGRM states that of that total amount, SGRM has determined that requests for more than 16 Bcf of capacity are viable. It is stated that SGRM is currently discussing binding commitments with the requesting

parties, and has executed a binding precedent agreement with one such party for firm storage service making use of 3 Bcf of the project's capacity for a primary term of ten years.

SGRM states that it is proposing to provide open-access firm and interruptible storage services to its customers, and is requesting authorization to charge market-based rates for such services. SGRM states that its market power study demonstrates that SGRM will not have market power in any relevant market.

Questions regarding the details of this proposed project should be directed to Jack W. Gatewood, Anthony J. Clark or Xavier Allemandou at SG Resources Mississippi, L.L.C., 7500 Felipe, Suite #600, Houston, Texas 77063 at (713) 914–8188 (phone), (713) 914–8189 (fax), jwgatewood@aol.com or James F. Bowe, Jr., Dewey Ballantine LLP, 1775 Pennsylvania Avenue, NW., Washington, DC 20006–4605, (202) 429–1444 (phone), (202) 429–1579 (fax), jbowe@dbllp.com.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 14, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13659 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–464–001, RP00–620–001 and RP00–620–002]

Stingray Pipeline Company, L.L.C.; Notice of Compliance Filing

May 24, 2002.

Take notice that on May 10, 2002 Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets:

Fourth Revised Sheet No. 1
Fifth Revised Sheet No. 2
Third Revised Sheet No. 49
Fifth Revised Sheet No. 58
Second Revised Sheet No. 69
First Revised Sheet No. 115
Sixth Revised Sheet No. 129
Fourth Revised Sheet No.130
Second Revised Sheet No. 131
Fourth Revised Sheet No. 133
Third Revised Sheet No. 138
Third Revised Sheet No. 148
Second Revised Sheet No. 148A
Second Revised Sheet No. 148B
Original Sheet No. 204
Sheet Nos. 205–209

Stingray states that the purpose of this filing is to comply with the Commission's March 29, 2002 order on Stingray's Order No. 637 pro forma compliance filing. Pursuant to Ordering Paragraph (B) of that order, Stingray is not proposing an effective date for the revised tariff sheets at this time.

Stingray states that a copy of this filing has been served to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13674 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–89–000]

Tenaska Power Services Co., Complainant, v. Southwest Power Pool, Inc., Respondent; Notice of Complaint

May 24, 2002.

Take notice that on May 22, 2002, Tenaska Power Services Co. (Tenaska Power) submitted a complaint against Southwest Power Pool Inc. (SPP). Tenaska Power alleges that SPP has violated its Tariff and Commission precedent and policy by refusing to honor Tenaska Power's valid request to rollover a long-term, firm transmission service contract.

A copy of Tenaska Power's Complaint was served on SPP on May 22, 2002.

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 June 3, 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 June 3, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13661 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–487–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

May 24, 2002.

Take notice that on May 1, 2002, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to become effective on July 1, 2002:

Second Revised Sheet No. 77

Tuscarora states that the purpose of this filing is to comply with Order No. 587–N, issued on March 11, 2002 in Docket No. RM96–1–019. In accordance with Order No. 587–N, Tuscarora is making this tariff filing to provide its shippers with the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination cycles and to recall unscheduled capacity at the Intra-Day 1 and Intra-Day 2 Nomination times. In addition, in compliance with Order No. 587–N, Tuscarora is removing NAESB Standard 5.3.7 and the first sentence of NAESB Standard 5.3.7 from its tariff.

Tuscarora states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 31, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13676 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.2899–105 Idaho]

Idaho Power Company; Notice of Availability of Environmental Assessment

May 24, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has reviewed Idaho Power Company's application for license amendment for extension of temporary amendment of license, approved by the May 8, 2001, order, at the Milner Hydroelectric project, located on the Snake River in Twin Falls and Cassia Counties, Idaho, and has prepared an environmental assessment (EA). The project includes about 109 acres of federal land administered by the Bureau of Land Management.

The EA contains the staff's analysis of the potential environmental impacts of the proposed amendment and concludes that the approval of the proposed amendment 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 May 21, 2002 for the above application. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the EA can also be obtained through the Commission's homepage at *http://www.ferc.gov*.

For further information, contact Kenneth Hogan at (202) 208–0434.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13665 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–002]

Millennium Pipeline Company, L.P; Notice Requesting Comments on Environmental Issues for a Route Variation in the City of Mount Vernon, NY on the Millennium Pipeline Project

May 24, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is requesting comments on environmental issues related to the impacts of constructing and operating the Mount Vernon Variation for the Millennium Pipeline Project (Project) proposed by Millennium Pipeline Company (Millennium) in New York.[1] The Mount Vernon Variation would substitute 0.67 mile of pipeline for about 1.2 miles of the Project in the City of Mount Vernon, New York.

The route was modified pursuant to the Commission's December 19, 2001 Interim Order for the Project in which the Commission asked representatives from Millennium, the City of Mount Vernon, other interested parties, and the citizens of Mount Vernon to work toward reaching an agreement on a route for the Project through Mount Vernon to an interconnection with Consolidated Edison Company of New York, Inc.'s (Con Edison) high pressure line. The parties reached an agreement about routing in Mount Vernon from the meter station at Oak Street and MacQuesten Parkway. Millennium filed a request that the Commission authorize this route, called the Mount Vernon Variation, on May 6, 2002. The modified route would change the final portion of the pipeline routing for the Project.

Most of the route variation would require in-street construction generally affecting a curb to curb area within the road right-of-way. Therefore, if you are a landowner receiving this notice, construction may occur in the street next to your property. However, along South Street, the variation would deviate from the road right-of-way so that construction across Metro North's New Haven Line railroad tracks may be completed as a bored crossing. Millennium would use the parking areas on both sides of the railroad for staging and the bore pits. Therefore, the parking lot landowners may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

We are seeking environmental comments on the portion of the route along the Mount Vernon Variation. Your comments will be part of the environmental review of the Project that will be used by the Commission in its decision-making process to determine whether approval of this portion of the Project instead of the original route is in the public convenience and necessity.

Summary of the Mount Vernon Variation

Millennium has proposed the Mount Vernon Variation which would replace about 1.2 miles of the Project between approximate mileposts (MPs) 421.8 and 423.0. The route variation is proposed to minimize construction within the City of Mount Vernon. These facilities would transport up to 350,000 dekatherms per day of gas for shippers to Mount Vernon, New York. Millennium seeks authority to construct and operate the following facilities on the Mount Vernon Variation:

- About 0.67 mile of 24-inch-diameter pipeline in Mount Vernon, New York.

The location of the Mount Vernon Variation is shown in appendix 1. The Mount Vernon Variation would extend to the southwest along the west side of MacQuesten Parkway from the intersection with Oak Street to South Street. At this point it would turn to the southeast on South Street for about 300 feet. Near the Metro North Railroad crossing, the variation would move out of the road right-of-way and into a parking area along the south side of the road and northwest of the railroad. The railroad crossing would be completed as a bored crossing from this parking area to the parking area on the southeast side of the railroad. Therefore, about 400 feet of the variation would be constructed parallel to the South Street road right-of-way, rather than under the road surface. After the bored crossing of the railroad, the variation would continue to the southeast through the parking area to Beach Street. At Beach Street the variation would turn to the southwest again and would be installed beneath the Beach Street Road surface for a distance of about 500 feet. The variation would end at the Bronx/Mount Vernon border at a new interconnection with high pressure facilities of Con Edison.

Land Requirements and Construction Procedures

Most of the pipeline construction along the variation would be within streets. The pipe would be installed using stove-pipe construction techniques and a 35-foot-wide construction work area between the curbs. Millennium does not anticipate using any sidewalk areas. MacQuesten Parkway is a divided, 4-lane street and Millennium would use the entire west side of the divided road for construction. In-street construction on South and Beach Streets would occupy the entire road surface. The segment of the streets needed for construction would be closed to vehicle traffic which would be routed around the work area. The length of the construction segment would vary, but would typically be between 200 and 500 feet to allow for trenching, staging and welding of the pipe, and backfill. Construction would require about 2.8 acres of land for in-street construction plus about 0.74 acre needed for extra workspaces for the bored railroad crossings. All intersecting roads would be open cut. Millennium is required to restore all road surfaces immediately after backfilling the trench.

The Interim Order requires certain construction procedures that Millennium must use when constructing the Project in the City of Mount Vernon. These requirements will apply to Project construction anywhere in the City of Mount Vernon, as appropriate, including along the Mount Vernon Variation if the Commission approves this route. These requirements include:

- Preparing site-specific construction and mitigation plans;
- Providing affected parties with information about construction related issues, including construction schedules, timing, and traffic detours around construction activities;
- Providing alternate parking locations for loss of parking spaces;
- Maintaining access to businesses and residential buildings;

[1] Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation filed their applications with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

• Properly maintaining construction equipment to reduce air and noise pollution; and

• Having appropriate utility repair crews and materials on site at all times during construction to facilitate repairs to damaged utilities, if needed.

The Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis on the important environmental issues. By this Notice, the Commission requests public comments on the scope of the issues related to the Mount Vernon Variation. All comments received are considered. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

To ensure your comments are considered, please carefully follow the instructions in the public participation section.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Millennium along the Mount Vernon Variation. This preliminary list of issues may be changed based on your comments and our analysis.

• In-street construction would be required.

• Construction may temporarily affect traffic.

• Access to businesses and residences could be affected.

• In-street construction may affect the buried utility infrastructure.

• Construction activities are noisy.

• Public safety.

We will also evaluate possible alternatives, if any, to the Mount Vernon Variation or portions of it, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed and considered by the Commission. You should focus on the potential environmental effects of the Mount Vernon Variation, alternatives to the variation, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 2.

• Reference Docket No. CP98–150–002.

• Mail your comments so that they will be received in Washington, DC on or before June 24, 2002.

Please note that we are continuing to experience delays in deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[2] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Information is also available on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Additional information about the proposed project is also available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13657 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

[2] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–204–000]

Transcontinental Gas Pipe Line Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Trenton Woodbury Expansion Project and Request for Comments on Environmental Issues

May 24, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trenton Woodbury Expansion Project involving construction and operation of facilities by Transcontinental Gas Pipeline

Company/Williams (Transco) in Mercer and Burlington Counties, New Jersey and Bucks County, Pennsylvania.[1] These facilities would consist of about 7.2 miles of 36-inch-diameter pipeline loop;[2] one new lateral pipeline (about 2.5 miles in length, 24-inch-diameter pipe); and one new meter station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Transco provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

Transco wants to expand the capacity of its facilities in New Jersey and Pennsylvania to transport an additional 51,037 dekatherms per day of natural gas to two shippers PECO Energy Company (PECO) and Virginia Power Energy Marketing, Inc./Dominion Energy (VPEM). Transco seeks authority to construct and operate:

- 7.2 miles of 36-inch-diameter loop and appurtenant facilities from milepost (MP) 8.2 to MP 15.4 on Transco's existing Trenton Woodbury Line in Mercer and Burlington Counties, New Jersey (Trenton Woodbury Loop);
- 2.5 miles of 24-inch-diameter pipeline from a tap located near MP 17.5 on Transco's existing Trenton Woodbury Line in Burlington County, New Jersey, to a point of interconnect with the Fairless Energy Power Generation Plant in Bucks County, Pennsylvania (Fairless Delivery Lateral); and
- One new meter station at the Fairless Energy Power Generation Plant site in Bucks County, Pennsylvania.

The location of the project facilities is shown in appendix 1.[3]

Land Requirements for Construction

Construction of the proposed facilities would require about 121.7 acres of land. Following construction, about 75.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Transco. This preliminary list of issues may be changed based on your comments and our analysis.

- The U.S. Fish and Wildlife Service identified the potential for the Federally-protected bald eagle, bog turtle, and the endangered shortnose sturgeon to occur in the vicinity of the Fairless Lateral.
- A total of 10.12 acres of wetlands, including 4.8 acres of forested, would be affected by construction of the proposed project.
- The Trenton Woodbury Loop would cross five tracts of land designated and maintained as open space under the New Jersey Green Acres Program.
- A total of 19 residences are located within 50 feet of the construction right-of-way along the proposed Trenton Woodbury Loop.

Also, Fairless Energy LLC is currently constructing a 1,180 megawatt combined cycle power plant in Bucks County, Pennsylvania. We have made a preliminary decision to not address the impacts of this nonjurisdictional facility. We will briefly describe the location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential

[1] Transco's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1 Branch.
- Reference Docket No. CP02–204–000.
- Mail your comments so that they will be received in Washington, DC on or before *June 26, 2002*.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13658 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

May 24, 2002.

Take notice that the following request to use alternative procedures to prepare a new license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a license application.

b. *Project No.:* 2150.

c. *Date filed:* May 20, 2002.

d. *Applicant:* Puget Sound Energy, Inc.

e. *Name of Project:* Baker River Hydroelectric Project.

f. *Location:* On the Baker River in Skagit and Whatcom Counties, Washington. The project occupies 5,335 acres of United States lands managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Connie Freeland, Puget Sound Energy, Inc., P.O. Box 97034, Bellevue, WA, 98009–9734; *cfreel@puget.com* (425) 462–3556.

i. *FERC Contact:* Steve Hocking, *steve.hocking@ferc.gov* (202) 219–2656.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (an original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. The existing Baker River Project has two developments. The Upper Baker Development is located at river mile 9.35 on the Baker River about 8 miles upstream of the City of Concrete, Washington. This development has the following existing facilities: (1) A 312-foot-high and 1,200-foot-long dam with an ogee-type spillway containing three radial gates that are each 25 feet wide and 30 feet high; (2) a 115-foot-high and 1,200-foot-long West Pass dike; (3) a 9-mile-long reservoir (Baker Lake) with a surface area of 4,797 acres at a normal maximum pool elevation of 724 feet mean sea level (fmsl); (4) a 122-foot-long and 59-foot-wide reinforced concrete powerhouse located in the north half of the existing riverbed and housing two turbine-driven generators with an authorized capacity of 90.7 megawatts (MW) and a hydraulic capacity of 5,100 cubic feet per second (cfs); (5) transmission lines; (6) downstream fish passage facilities and artificial spawning beaches; and (7) appurtenant facilities.

The Lower Baker Development is located 0.5 mile upstream of the confluence of the Baker and Skagit Rivers. This development has the following existing facilities: (1) A 285-foot-high and 570-foot-long concrete gravity arch dam with a spillway containing 23 vertical slide gates that

are each 14 feet high and 9.5 feet wide; (2) a concrete intake equipped with trashracks and gatehouse located near the left dam abutment; (3) one concrete and steel-lined penstock; (4) a 7-mile-long reservoir (Lake Shannon) with a surface area of 2,190 acres at a normal maximum pool elevation of 438.6 fmsl; (5) a reinforced concrete powerhouse that is 90 feet long and 66 feet wide housing a single turbine-generator with an authorized capacity of 71.4 MW and a hydraulic capacity of 4,100 cfs; (6) transmission lines; (7) a barrier dam; (8) upstream and downstream fish passage facilities; and (9) appurtenant facilities.

l. A copy of the request to use alternative procedures is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Puget Sound Energy, Inc. has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Puget Sound Energy Inc. has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Puget Sound Energy Inc. has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Puget Sound Energy Inc.'s request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Puget Sound Energy Inc. will develop and file a preliminary National Environmental Policy Act Document, in lieu of an exhibit E in its license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Puget Sound Energy Inc. has met with federal and state resources agencies, NGOs, elected officials, environmental groups, business and economic development organizations, and members of the public regarding the Baker River Project. Puget Sound Energy Inc. intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by April 30, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13664 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 24, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. Copies of these filings are on file with the Commission and are available for public inspection. The documents may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project No. 1354–000.	5–15–02	Noreen L. McDonald.
2. CP00–40–000.	5–15–02	Senator Bill Nelson (U. S. Senate).
3. CP00–36–000.	5–15–02	Senator Russell D. Feingold (U. S. Senate).
4. Project No. 2055–010.	5–16–02	
Carol Gleichman..		
5. Project No. 2342–000.	5–21–02	Gwill Ging.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13668 Filed 5–30–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0076; FRL–7179–3]

Solutions By Design II, LLC and Roy Hiler; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be

transferred to Solutions By Design II, LLC and its subcontractor, Roy Hiler, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Solutions By Design II, LLC and its subcontractor, Roy Hiler, have been awarded a contract to perform work for OPP, and access to this information will enable Solutions By Design II, LLC and its subcontractor, Roy Hiler, to fulfill the obligations of the contract.

DATES: Solutions By Design II, LLC and its subcontractor, Roy Hiler, will be given access to this information on or before June 5, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Erik Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, 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?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. GS–35F–4717G, Solutions By Design II, LLC and its subcontractor, Roy Hiler, will perform the following : Provide analysis, design, development, installation and maintenance of OPP applications developed in Lotus Notes and their interconnectivity to other applications developed in Oracle. The Project Officer or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out work required under this contract.

For this work assignment, the contractor will be creating Lotus Notes applications that interface with the Oracle, Office of Pesticide Programs Information Network (OPPIN) System. The contractor will not be working on specific chemicals, however, the contractor may have access to FIFRA CBI information by troubleshooting a user issue containing this data. The contractor may have access to FIFRA CBI by testing applications that manipulate this data in the following data bases but not limited to: IHAD, LRS, and State Label Issue Tracking.

The OPP has determined that access by Solutions By Design II, LLC and its subcontractor, Roy Hiler, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Solutions By Design II, LLC and its subcontractor, Roy Hiler, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Solutions By Design II, LLC and its subcontractor, Roy Hiler, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Solutions By Design II, LLC and its subcontractor, Roy Hiler, until the requirements in this document have been fully satisfied. Records of information provided to Solutions By Design II, LLC and its subcontractor, Roy Hiler, will be maintained by EPA Project Officers for this contract. All information supplied to Solutions By Design II, LLC and its subcontractor, Roy Hiler, by EPA for use in connection with this contract will be returned to EPA when

Solutions By Design II, LLC and its subcontractor, Roy Hiler, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: May 13, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 02–13523 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed May 20, 2002 Through May 24, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020205, Draft EIS, FHW, CO, CO–9 (Frisco to Breckenridge) Highway Improvements Project, To Improve a 14.5-kilometer (9–mile) stretch of SH 9 between the Towns of Frisco and Breckenridge, To Decrease Travel Time, Improve Safety, Support Transportation needs of Local and Regional Travelers, Funding, Right-of-Way and COE Section 404 Permits, Summit County, CO, Comment Period Ends: July 15, 2002, Contact: Scott Sands (303) 969–6730.

EIS No. 020206, Draft EIS, FHW, MD, I–270/US 15 Multi-Modal Corridor Study, From Shady Grove Metro Station northwesterly to the US 15/Biggs Ford Road Intersection, To Relieve Congestion and Improve Safety Conditions, Montgomery and Frederick Counties, MD, Comment Period Ends: August 16, 2002, Contact: Dan Johnson (410) 962–4342.

EIS No. 020207, Final EIS, FHW, TX, President George Bush Turnpike (PGBT) Segment IV, Improvement from Interstate Highway 35E to Interstate Highway 635, Funding and COE Section 404 Permit, Dallas County, TX, Wait Period Ends: July 01, 2002, Contact: C. D. Reagon (512) 536–5950.

EIS No. 020208, Draft EIS, FHW, OH, KY, Ironton-Russell Bridge Replacement Project, LAW–93C–0.00, PID 17359, To Replace the Structurally-Deficient and Functionally-Obsolete Bridge,

Funding, NPDES, US Coast Guard Section 9 Bridge Permits and COE Section 10 and 404 Permits, Lawrence County, OH and Greenup County, KY, Comment Period Ends: July 15, 2002, Contact: Peter Jilek (614) 280–6835.

EIS No. 020209, Draft Supplement, COE, FL, PCS Phosphate—White Springs Mine Continuation Mining Operations, Proposes to Discharge Dredged/ Fill Material into 1,858 Acres of Jurisdictional Wetlands, Applications of ''Life of Mine'' Permit, Hamilton County, FL, Comment Period Ends: July 15, 2002, Contact: Richard Legere (352) 331–0732. This document is available on the Internet at: *http://www.saj.usace.army.mil/permit/occidental.htm.[sic].*

EIS No. 020210, Draft EIS, BLM, NV, Toquop Energy Project, Toquop Land Disposal Amendment to the Caliente Management Framework Plan (MFP), Constructing an 1,100-megawatt (MW) Natural Gas-Fired Water-Cooled Electric Power Generating Plant and Associated Features on Public Lands, Right-of-Way Permit, Lincoln, Clark and Washoe Counties, NV, Comment Period Ends: August 29, 2002, Contact: Dan Netcher (775) 289–1872. This document is available on the Internet at: *http://www.nv.blm.gov.*

EIS No. 020211, Draft EIS, AFS, MT, Pipestone Timber Sale and Restoration Project, To Propose Timber Harvest, Prescribed Fire Burning, Watershed Restoration, Associated Activities, Kootenai National Forest, Libby Ranger District, Lincoln County, MT, Comment Period Ends: July 15, 2002, Contact: Tim Charnon (406) 293–7773.

EIS No. 020212, Final EIS, COE, MS, Yalobusha River Watershed, Demonstration Erosion Control Project, Construction of Six Floodwater-Retarding Structures, Yazoo Basin, Webster, Calhoun and Chickasaw Counties, MS, Wait Period Ends: July 01, 2002, Contact: Wendell King (601) 631–5967.

EIS No. 020213, Draft EIS, FHW, PA, Mon/Fayette Transportation Project, Improvements from PA Route 51 to I–376 in Monroeville and Pittsburg, Funding, U.S. Coast Guard Bridge Permit and COE Section 404 Permit, Allegheny County, PA, Comment Period Ends: August 14, 2002, Contact: James A. Cheatham (717) 221–1720.

EIS No. 020214, Draft EIS, BLM, CA, Headwaters Forest Reserve, Implementation Resource Management Plan, Long-Term Management Plan and Planning Framework, Located in the northwestern Coast Ranges near Humboldt Bay in Humboldt County, CA, Comment Period Ends: September 06, 2002, Contact: Lynda J. Roush (916) 737–3010. This document is available on the Internet at: *www.ca.blm.gov/arcata.*

EIS No. 020215, Draft EIS, USA, KY, Blue Grass Army Depot the Destruction of Chemical Munitions, To Address the Design, Construction, Operation, and Closure of Facility, Madison County, KY, Comment Period Ends: July 15, 2002, Contact: Penny Robitaille (410) 436–4178.

EIS No. 020216, Final EIS, DOD, AL, CO, AR, KY, Assembled Chemical Weapons Destruction Technologies at One or More Sites: Design, Construction and Operation of One or More Pilot Test Facilities, Anniston Army Depot, AL; Pine Bluff Arsenal, AR; Blue Grass Army Depot, KY and Pueblo Chemical Depot, CO, Wait Period Ends: July 01, 2002, Contact: Jon Ware (410) 436–2210.

EIS No. 020217, Final EIS, DOE, SC, Savannah River Site, High-Level Waste Tank Closure (DOE/EIS–0303D), Implementation, Industrial Wastewater Closure Plan for the F and H-Area High-Level Waste Tank Systems, Aiken County, SC, Wait Period Ends: July 01, 2002, Contact: Andrew R. Grainger (800) 881–7292.

EIS No. 020218, Final EIS, NOA, Deep-sea Red Crab (chaceon quinquedens) Fisheries, Fishery Management Plan, Development and Implementation, Norfolk Canyon in the south to the Haque Line in the north, Continental United States and Exclusive Economic Zone (EEZ), Wait Period Ends: July 01, 2002, Contact: Steve Kokkinakis (978) 281–9300.

EIS No. 020219, Final EIS, FAA, NY, Adoption-Plattsburgh Air Force Base (AFB) Disposal and Reuse, Implementation for Use in Preparing a Record of Decision for US Department of Transportation's (USDOT), Federal Aviation's (FAA) Decisions Relative to Reuse, Clinton County, NY, Contact: Marie Jenet (516) 227–3811. USDOT, FAA has *adopted* the Department of Defense's, United States Air Force FEIS #950514, filed with the US Environmental Protection Agency on 11/09/1995. FAA was a *cooperating* Agency on the above project. Recirculation of the document is not necessary under 1506.3(c) of the Council on Environmental Regulations.

Dated: May 28, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–13690 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–FAA–B51020–CT Rating EC2, Groton-New London Airport, Construction of Runway 5–23 Safety Area, Permits and Approvals, Town of Groton, New London County, CT.

Summary: EPA has environmental concerns and requested additional information regarding alternatives, impacts and mitigation associated with the proposed project.

ERP No. D–HHS–E80003–GA Rating LO, Chamblee Campus Centers for Disease Control and Prevention (CDC) Expansion, Atlanta Metro Area, City of Chamblee, Dekalb County, GA.

Summary: While EPA has no objection to the proposed action, EPA did request that some additional information be provided to help clarify certain issues.

ERP No. DS–AFS–E65036–00 Rating NC, Vegetation Management in the Coastal Plain/ Piedmont, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), US Forest Service Southern Region, AL, GA, FL, SC, NC, LA, MS and TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. DS–AFS–E65037–00 Rating NC, Vegetation Management in the Appalachian Mountains, Proposal to Clarify Direction for Conducting Project-Level Inventories for Biological Evaluations (BEs), AL, GA, KY, NC, SC, TN, VA and WV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. DS–NPS–J61102–00 Rating EO2, Yellowstone and Grand Teton National Parks and John D. Rockefeller, Jr., Memorial Parkway, Winter Use Plans, Updated and New Information on New Generation of Snowmobiles that Produce fewer Emissions and are Quieter, Fremont County, ID; Gallatin and Park Counties, MT and Park and Teton Counties, WY.

Summary: EPA expressed environmental objections based on the potential adverse impacts from three action alternatives, 1b, 2 and 3 which could result in noncompliance with air quality standards and potential adverse impacts on human health.

Final EISs

ERP No. F–AFS–B65009–NH Loon Mountain Ski Resort Development and Expansion Project, Implementation, Special Use Permit and NPDES Permit Issuance, White Mountain National Forest, Pemgewasset Ranger District, Grafton County, NH.

Summary: EPA expressed environmental concerns about growth impacts and associated mitigation and made recommendations about hydrogeologic and air quality issues.

ERP No. F–FHW–E40781–TN I–40 Transportation Improvements from I–75 to Cherry Street in Knoxville, Funding, NPDES and US Army COE Section 404 Permits Issuance, Knox County, TN.

Summary: EPA continues to have environmental concerns regarding noise and cultural resources impacts. EPA supports the construction of noise barriers that were proposed but were not committed to be constructed.

Dated: May 28, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–13691 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0001; FRL–7181–7]

EPA Dockets; EPA's New Electronic Public Docket and Comment System; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of a new electronic public docket and comment system designed to greatly expand access to EPA's public dockets, and facilitate the submission of public comments to EPA, providing an unprecedented level of online access to EPA's programs and rulemaking processes. Known as EPA Dockets, this online system will allow you to search the Agency's major public dockets online, view the index listing of the contents for the dockets included in the system, and access those materials that are available online. You will be able to submit your comments online when a particular public docket available in EPA Dockets is open for public comments, and you will be able to view public comments online for that docket. This new capability will be a valuable tool to support the Agency's regulatory process by enabling more efficient access to EPA's rulemaking development process, and will create a new means for the Agency to share other non-rulemaking information for comment purposes. This capability will enable Agency rulemakers and decision-makers to carry out their responsibilities more efficiently. It will greatly enhance the public's access to the materials used in EPA's decision-making process, simplify electronic commenting, and access to the public comments in those public dockets available in EPA Dockets. This document provides a brief introduction to EPA Dockets, along with an overview of EPA's policies related to the implementation of the system.

FOR FURTHER INFORMATION CONTACT: Shivani Desai, Information Strategies Branch, Collection Strategies Division (Mail Code 2822T), Office of Environmental Information (OEI), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1674; fax number: (202) 566–1639; e-mail address: desai.shivani@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Electronic government is a core component of the President's Management Agenda with stated goals to: Make it easy for citizens to obtain service and interact with the federal government; improve government efficiency and effectiveness; and improve government's responsiveness to citizens. With those goals in mind, twenty-four projects with the most potential to simplify and unify agency processes and information flows, provide one-stop services to citizens and increase agency effectiveness were identified by the Office of Management and Budget (OMB) for implementation. One of those projects, On-Line Rulemaking, will create an easy-to-use, government-wide on-line portal to find and comment on proposed rules. The project will ultimately improve quality, efficiency, and consistency in the federal rulemaking processes. EPA Dockets is consistent with the approach contained in the On-Line Rulemaking project and can serve as an important building block for development. More information regarding the projects included in the President's Management Agenda for E-gov can be obtained from the federal government's E-Government Strategy on the OMB website at http://www.whitehouse.gov/omb/inforeg/egovstrategy.pdf.

There are also several statutory mandates for federal agencies to provide electronic access to agency information. For example, the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII (1998), mandates that agencies give citizens the option to submit information and conduct transactions with the agency electronically, when practicable, by October 2003. The Electronic Freedom of Information Act (E-FOIA), Amendments of 1996, 5 U.S.C. 552(a), require agencies to ensure the electronic availability of the agency-created records that must be available for public inspection and copying, through on-line access where possible, or by other electronic means, and that agencies provide an electronic copy of the information if readily reproducible electronically when requested in that format. Other mandates require agencies to consider revising their operations or procedures to maximize the use of today's electronic technology.

EPA initiated the development of an electronic public docket system after a 1996 survey of docket customers revealed the desire of docket customers to have electronic access to docket materials and the ability to search across all of the EPA dockets for information. Initiated prior to the online rulemaking initiative included in the President's Management Agenda for E-gov, and before the enactment of the electronic access mandates, today's announcement of the EPA Dockets demonstrates EPA's commitment to ensuring that the public has access to the information that is used to inform the Agency's decisions regarding potential risks to the environment and public health, and that the public has an opportunity to participate in the Agency's decision process. By providing online access to EPA's public dockets, and an online mechanism for the submission of public comments, EPA is advancing the E-Government Strategy, as well as satisfying the mandate under GPEA.

II. EPA's New Electronic Docket

The following is a brief introduction to EPA Dockets, along with an overview of EPA's policies related to the implementation of the system.

A. What is a Docket?

The official docket serves as the repository for the collection of documents or information related to a particular agency action or activity. The official docket generally consists of the documents specifically referenced in the **Federal Register** document, any public comments received, and other information used by decision-makers, or otherwise related to the Agency action or activity. Agencies most commonly use dockets for rulemaking actions, but dockets may also be used for various other non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the Paperwork Reduction Act, and other non-rule activities.

The public docket is the collection of materials in the official docket that is available for public inspection and copying. Although a part of the official docket for an action or activity, the public docket does not include Confidential Business Information (CBI) or other information whose public disclosure is restricted by statute.

The Agency will continue to maintain the official docket in paper form at the EPA docket facilities established for the particular program or office, where the public docket will be made available for public inspection and copying. The public can continue to view the public dockets at the facility, as well as request a copy of the docket's index or a copy of a listed publicly available document(s).

B. What is EPA Dockets?

The EPA Dockets, known during the development and pilot stages as the Regulatory Public Access System (RPAS), is an online system that provides electronic access to EPA's public dockets. During the development of EPA Dockets, the system was initially intended to enhance public access to rulemaking information, so most of the public dockets that are currently available in EPA Dockets will be rulemaking dockets. However, since EPA Dockets provides an effective and efficient mechanism for the public to access electronic records and submit electronic comments, you will also notice that EPA Dockets provides electronic access to other non-rulemaking dockets. The type of docket (i.e., rulemaking docket or general docket) is clearly identified within the system. In addition, when the Agency issues a **Federal Register** document after today, it will specifically identify in that **Federal Register** document whether a docket has been established, and whether the public docket has been included in EPA Dockets, and it will identify the specific identification number assigned to that docket.

1. *Which Dockets Facilities are Using EPA Dockets?* EPA Dockets is being phased-in across the Agency, starting with the following four Headquarter offices: The Office of Solid Waste and Emergency Response (OSWER), the Office of Air and Radiation (OAR), the Office of Water (OW), and the Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Participation is expected to be expanded to include other EPA Headquarter offices, with the Office of Environmental Information (OEI), and the Office of Enforcement and Compliance Assurance (OECA) slated to implement the system for their dockets in the Fall of 2002.

Since the Agency is phasing-in the implementation of EPA Dockets, you will notice that not all **Federal Register** documents with a docket that publish after today will be included in EPA Dockets. For those offices that are already using EPA Dockets, this will occur because the docket related to that **Federal Register** document was already established prior to the implementation of EPA Dockets, and is therefore not available in EPA Dockets. **Federal Register** documents with a docket that are issued by EPA offices that have not yet implemented EPA Dockets will be included in EPA Dockets at a later date, when the system is implemented by their docket facility.

In addition, EPA Dockets will provide online public access to several legacy public dockets, i.e., dockets that were originally created in paper, including dockets that were transferred to EPA Dockets from an existing electronic docket system, as well as dockets that were entered into EPA Dockets during the pilot and initial implementation stages.

As of May 31, 2002, the following docket facilities will use EPA Dockets to establish the public docket, index the docket contents, and, to the extent feasible, provide the electronic version of publicly available docket materials:

Air Docket; telephone number: (202) 260–7549; e-mail address: a-and-r-Docket@epa.gov

Pesticides Docket; telephone number: (703) 305–5805; e-mail address: opp-docket@epa.gov

RCRA Docket; telephone number: (703) 603–9230; e-mail address: rcra-docket@epa.gov

Superfund Docket; telephone number: (703) 603–9232; e-mail address: superfunddocket@epa.gov

Toxics Docket; telephone number: (202) 260–7099; e-mail address: oppt-ncic@epamail.epa.gov

UST Docket; telephone number: (703) 603–9230; e-mail address: rcra-docket@epa.gov

Water Docket; telephone number: (202) 260–3027; e-mail address: OW-Docket@epa.gov

The following docket facilities are preparing to implement EPA Dockets later this year:

OEI Docket; telephone number: (202) 566–1677.

OECA Docket; telephone number: (202) 564–2614; e-mail address: oeca.docket@epa.gov

EPA will consolidate all the Headquarter paper docket facilities into a ''Combined Docket Facility'' in August of 2002. This new facility will continue to be located in Washington, DC, and will provide state-of-the-art technology, security, and comfort to and for the public docket user community. Prior to the opening of the ''Combined Docket Facility,'' EPA will publish a notice in the **Federal Register** announcing the facility's contact information. This information will also be posted on the EPA website at http://www.epa.gov/epahome/dockets.htm. If you have questions about a particular docket, please contact the appropriate docket facility directly.

2. *What Docket Materials will be Accessible Through EPA Dockets?* The content of EPA Dockets will generally mirror that of the public docket, with a few exceptions. Since the public docket does not include CBI or other information whose public disclosure is restricted by statute, the EPA Dockets will not include any of this information. Although included in the paper public docket, EPA has determined that the following material will not be included in EPA Dockets:

- Material subject to copyright protection.
- Audio and video materials.
- Oversized printed materials (e.g., greater than 11″ x 14″).
- Other physical, three dimensional items.

In addition, since the paper docket currently remains the official docket, EPA Dockets may not contain electronic copies of all of the materials that are available in the paper public docket. For example, if EPA only has access to a paper copy of a document that is included in the official docket, EPA

intends to scan and create an electronic copy of that document so that it can also be accessed in EPA Dockets. At times, however, the Agency may not be able to complete this conversion for all of the materials in the paper public docket. Eventually, however, EPA intends to provide electronic access to all of the publicly available docket materials through EPA Dockets, and will be working to designate EPA Dockets as the official public docket.

With regard to public comments, EPA will continue to place all public comments in the public docket as EPA receives them and without change. For those comments that contain CBI, or other information whose disclosure is restricted by statute, EPA will continue to ask the commenter to provide a non-CBI version of the comment for inclusion in the public docket.

For EPA Dockets, EPA's policy is that public comments will be made available for public viewing in EPA Dockets, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA Dockets. The entire printed comment, including the copyrighted material, will be available in the paper public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Public comments that are mailed or delivered in paper form to the docket facility will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA Dockets. Although not all docket materials may be available electronically, you may still access paper copies of any of the publicly available docket materials through the docket facility identified in the **Federal Register** document.

3. *How Can I Access and Use EPA Dockets?* You may access EPA Dockets on the Internet at http://www.epa.gov/edocket. You may use EPA Dockets to access available public docket materials online, as well as submit electronic comments to EPA during the open comment period for a particular docket available in EPA Dockets. To search for an available public docket or to search for a particular docket material, the system provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: ''Quick Search'' to search using a full-text search engine, or through an ''Advanced Search,'' which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, **Federal Register** reference, CFR citation, etc. Each data field in the advanced search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in EPA Dockets that is relevant to the requested subject or topic.

You may also use EPA Dockets to submit your comments online when a particular docket available in EPA Dockets is open for public comments. The **Federal Register** document will identify whether a docket has been established in EPA Dockets, and will provide detailed instructions identifying the various methods that can be used to submit public comments to EPA.

If the docket for the **Federal Register** document was established prior to May 31, 2002, it may not identify EPA Dockets as an available method for submitting electronic comments on that **Federal Register** document. In such cases, if you do not find that public docket in EPA Dockets, you will not be able to use EPA Dockets to submit electronic comments to that particular docket, and you will need to follow the instructions in that **Federal Register** document for submitting your comments to EPA. If that public docket is nonetheless available in the system, EPA encourages you to use the system to submit your electronic comments. If the **Federal Register** document does not discuss EPA Dockets, only those comments submitted through EPA Dockets will be available in their entirety for online viewing in EPA Dockets.

Your use of EPA Dockets to submit comments to EPA electronically is EPA's preferred method for receiving comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment to ensure that you can be identified as the submitter of the comment, and it allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

You should continue to ensure that your comments are submitted within the specified open comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments in formulating a final decision.

III. Additional Information

Additional details about EPA Dockets, as well as detailed instructions and assistance for using the system, is available online. Be sure to use the feedback function to let us know about your experiences using the system. We will use that feedback to help us identify potential improvements that would better service your needs. You may also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Docket, Electronic, Public comment, Records.

Dated: May 22, 2002.

Mark A. Luttner,

Director of Information Collection, Office of Environmental Information.

[FR Doc. 02–13521 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0083; FRL–7180–7]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (FIFRA SAP) to consider and review two topics. The first topic is to update the FIFRA SAP

on the status of preliminary results from cumulative risk estimates for organophosphate pesticides (OP) using alternative models (Calendex™, LifeLine™, and CARES™) and similar input data and parameters. The second topic is review of cumulative risk assessments for OPs: Susceptibility and age dependent sensitivity.

DATES: The meeting will be held from June 25–27, 2002, from 8:30 a.m. to 5 p.m, eastern standard time.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Crystal City Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements 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, your request must identify docket ID number OPP–2002–0083 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official (DFO), for topic 1 or Paul Lewis, DFO, for topic 2, Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: olga.odiott@epa.gov or lewis.paul@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 persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and FQPA. 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 one of the DFOs 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 meeting agenda and background documents relevant to this meeting are now available. EPA's position paper, questions to the FIFRA SAP, and the FIFRA SAP composition (i.e., members and consultants) will be available as soon as possible, but no later than mid-June. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person*. The Agency has established an official record for this meeting under docket ID number OPP–2002–0083. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, 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. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be 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 May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0083 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to one of the DFOs listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, Thursday, June 20, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to the FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, Thursday, June 20, 2002, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact one of the DFOs listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFOs at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

Contact DFO, Olga Odiott, for topic 1 and DFO, Paul Lewis for topic 2.

4. *Submission of requests and written comments*—a. *By mail*. Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier*. Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis 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.

c. *Electronically*. You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0083. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The FIFRA SAP will meet to review two topics:

1. *Update the FIFRA SAP on the status of preliminary results from cumulative risk estimates for organophosphate pesticides (OP) using alternative models (Calendex™, LifeLine™, and CARES™) and similar input data and parameters*.

Cumulative risk estimates for OPs derived by EPA using the Calendex™ model (Novigen Sciences, Inc.) will be compared to preliminary results derived by The LifeLine Group using the LifeLine™ model and the Sound Science Policy Alliance (SSPA) using the CARES™ model. The LifeLine™ assessments were conducted under contract to EPA. CARES™ assessments were conducted by a group of OP registrants and their consultants (SSPA). These preliminary results will be presented to the FIFRA SAP by EPA for informational purposes only. The FIFRA SAP will not be asked to formally review and comment on these preliminary results.

2. *Cumulative risk assessments for organophosphate pesticides: Susceptibility and age dependent sensitivity*. The FQPA instructs EPA, in making its ''reasonable certainty of no harm'' finding, that in ''the case of threshold effects,...an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential prenatal and postnatal toxicity and completeness of data with respect to exposure and toxicity to infants and children.'' In implementing the FQPA safety factor provision in the context of assessing cumulative risk, the Agency has evaluated pertinent data concerning the potential for prenatal and postnatal effects associated with the common mechanism of toxicity for OP pesticides (namely, inhibition of acetylcholinesterase), the completeness of the hazard data with respect to common mechanism of toxicity to infants and children, and the completeness of the exposure database. The Agency seeks the FIFRA SAP's review on the interpretation of the available laboratory studies on cholinesterase activity in fetal, neonatal and juvenile rats. In addition, the FIFRA SAP is asked to consider the mechanistic basis underlying the age dependent sensitivity of young to cholinesterase inhibition caused by OP pesticides.

B. The FIFRA SAP Report

The FIFRA SAP will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

List of Subjects

Environmental protection, Organophosphate pesticides, Pesticides and pests.

Dated: May 22, 2002.

Sherell A. Sterling,

Director, Office of Science Coordination and Policy.

[FR Doc. 02–13522 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0017; FRL–7180–3]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Subtances; Second List of Priority Chemicals for Guideline Development

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL), established by EPA under the Federal Advisory Committee Act (FACA), develops AEGLs on an ongoing basis to assist with Federal, State, and other organization needs for short-term hazardous chemical exposure information. NAC/AEGL encourages the submission of acute toxicology data or other pertinent information on these chemicals and all other chemicals on the list to the Designated Federal Officer, listed under **FOR FURTHER INFORMATION CONTACT**.

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 ID number OPPTS–2002–0017 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: tobin.paul@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 persons interested in the development of AEGLs for chemical

emergency planning purposes. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **Federal Register**—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket ID number OPPTS–2002–0017. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPTS–2002–0017 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPPTS–2002–0017. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID 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?

This list of 371 priority chemicals is a composite of numerous priority lists of acutely toxic chemicals and represents the selection of chemicals for AEGL development by the NAC/AEGL during the next several years. The list has been assembled from the individual lists of chemicals nominated by NAC/AEGL member organizations for AEGL development. Although the priority list of chemicals, published in this notice, is subject to modification as priorities of the NAC/AEGL committee or the NAC/AEGL member organizations change, it is anticipated that most of the chemicals on the priority list will remain as high priority for AEGL development during the next several years. The NAC/AEGL intends to address at least 30 chemicals per year in the AEGL development process. There are 137 chemicals on this list of 371 priority chemicals that are considered a higher priority (indicated by an asterisk below), based on considerations of toxicity, volatility, presence on numerous organization chemical lists, and other factors. These chemicals are planned to be addressed prior to the other listed chemicals. Any suggested additions to this priority list and the rationale for their addition may be addressed to the Designated Federal Officer. An initial listing of 85 priority chemicals was published in the **Federal Register** of May 21, 1997 (62 FR 27733) (FRL–5713–7), to facilitate participation by the public in the AEGL process.

It is believed that publication of today's list of chemicals will provide individuals and organizations with

ample time to gather existing data and information and, where appropriate, to develop new data and information on the acute toxicity of the chemicals listed herein, for the consideration of the NAC/AEGL. Parties possessing such data and information or those anticipating the future conduct of toxicity studies on any of these chemicals should contact the Designated Federal Officer.

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT

CAS No.	Chemical Name
50–00–0	Formaldehyde*
50–29–3	4,4'-DDT
50–32–8	Benzo(a)pyrene*
54–11–5	Nicotine
56–38–2	Parathion*
56–55–3	Benzo(a)anthracene
56–72–4	Coumaphos
57–24–9	Strychnine*
57–57–8	Beta-Propiolactone
57–74–9	Chlordane*
58–89–9	Lindane (hexachlorocyclohexane)
60–29–7	Ethyl ether
60–51–5	Dimethoate
60–57–1	Dieldrin
62–38–4	Phenylmercuric acetate*
62–73–7	Dichlorvos
62–74–8	Sodium fluoroacetate*
62–75–9	Nitrosodimethylamine
64–18–6	Formic acid
64–19–7	Acetic acid
67–64–1	Acetone*
74–82–8	Methane
74–83–9	Methyl bromide*
74–87–3	Methyl chloride*
74–88–4	Methyl iodide
74–89–5	Methyl amine*
74–98–6	Propane*
75–00–3	Chloroethane
75–01–4	Vinyl chloride*
75–02–5	Vinyl fluoride
75–04–7	Ethyl amine*
75–05–8	Acetonitrile
75–07–0	Acetaldehyde*
75–08–1	Ethyl mercaptan*
75–12–7	Formamide
75–15–0	Carbon disulfide*
75–18–3	Dimethyl sulfide
75–25–2	Bromoform
75–34–3	1,1-Dichloroethane
75–36–5	Acetyl chloride*
75–50–3	Trimethylamine*
75–54–7	Methyl dichlorosilane*
75–65–0	t-Butyl alcohol
75–93–4	Methyl sulfate
76–02–8	Trichloroacetyl chloride*
76–06–2	Chloropicrin*
76–44–8	Heptachlor
77–47–4	Hexachlorocyclopentadiene
77–78–1	Dimethyl sulfate*
78–00–2	Tetraethyl lead
78–71–7	Oxetane, 3,3-bis(chloromethyl)-
78–85–3	Methacrylaldehyde*
78–87–5	1,2-Dichloropropane
78–94–4	Methyl vinyl ketone*
78–95–5	Chloroacetone (stabilized)*
78–97–7	Lactonitrile
79–04–9	Chloroacetyl chloride*
79–06–1	Crylamide
79–09–4	Propionic acid
79–14–1	Glycolic acid
79–19–6	Thiosemicarbazide
79–38–9	Trifluorochloroethylene
79–41–4	Methacrylic acid*
79–57–2	Terramycin*
80–15–9	Cumene hydroperoxide
80–56–8	alpha-Pinene
80–62–6	Methyl methacrylate*

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT—Continued

CAS No.	Chemical Name
80–63–7	Methyl 2-chloroacrylate
81–81–2	Warfarin
82–66–6	Diphacinone
84–66–2	Diethyl phthalate
84–74–2	di-n-Butyl phthalate
85–68–7	Butyl benzyl phthalate
86–50–0	Azinphos-methyl*
86–74–8	Carbazole
87–86–5	Pentachlorophenol
92–52–4	Biphenyl
94–75–7	2,4-Dichlorophenyoxy acetic acid
95–48–7	o-Cresol
95–63–6	Trimethyl benzene
96–29–7	2-Butanone oxime
97–02–9	2,4-Dinitroaniline*
98–05–5	Phenyl arsonic acid
98–07–7	Benzyl trichloride
98–09–9	Benzenesulfonyl chloride
98–13–5	Trichlorophenyl silane
98–16–8	3-(Trifluoromethyl) Aniline
98–82–8	Cumene
98–87–3	Benzal chloride
98–88–4	Benzoyl chloride
98–95–3	Nitrobenzene
100–14–1	Benzene, 1-(chloromethyl)-4-nitro-
100–41–4	Ethyl benzene
100–42–5	Styrene*
100–44–7	Benzyl chloride
100–51–6	Benzyl alcohol
101–68–8	4,4-Methylenediphenyl diisocyanate*
103–71–9	Phenyl isocyanate
105–60–2	Caprolactam
106–44–5	p-Cresol
106–50–3	p-Phenylenediamine
106–88–7	1,2-Butylene oxide
106–93–4	Dibromoethane*
106–96–7	Propargyl bromide
106–97–8	Butane*
106–99–0	Butadiene*
107–05–1	Allyl chloride
107–06–2	1,2-Dichloroethane
107–07–3	Chloroethanol
107–13–1	Acrylonitrile*
107–14–2	Chloroacetonitrile*
107–16–4	Formaldehyde cyanohydrin
107–19–7	Propargyl alcohol
107–20–0	Chloroacetaldehyde*
107–21–1	Ethylene glycol
107–37–9	Allyl trichlorosilane
107–72–2	Amyltrichlorosilane
108–05–4	*Vinyl acetate monomer
108–10–1	4–Methyl–2–pentanone
108–24–7	Acetic anhydride*
108 31–6	Maleic anhydride*
108–39–4	m-Cresol
108–65–6	Propylene glycol monomethyl ether acetate
108–67–8	Mesitylene
108–90–7	Chlorobenzene*
108–98–5	Phenylmercaptan*
109–73–9	n–Butylamine
109–77–3	Malononitrile*
109–89–7	Diethyl amine
109–90–0	Ethyl isocyanate
109–99–9	Tetrahydrofuran*
110–54–3	Hexane*
110–57–6	Trans-1,4-dichlorobutene
110–78–1	n-Propyl isocyanate
110–82–7	Cyclohexane*
110–86–1	Pyridine
111–34–2	Butyl vinyl ether
111–36–4	n-Butyl isocyanate*
111–42–2	Diethanolamine

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT—Continued

CAS No.	Chemical Name
111–44–4	Dichloroethyl ether
111–48–8	Thiodiglycol
111–69–3	Adiponitrile
111–77–3	Diethylene glycol monomethyl ether
111–88–6	n-Octylmercaptan*
115–21–9	Trichloroethyl silane
116–06–3	Aldicarb*
116–14–3	Tetrafluoroethylene
116–15–4	Hexafluoropropylene
117–84–0	Dioctyl phthalate
118–52–5	1,3-Dichloro-5,5-dimethylhydantoin
120–82–1	1,2,4-Trichlorobenzene
121–75–5	Malathion
122–14–5	Fenitrothion
123–31–9	Hydroquinone
123–38–6	Propionaldehyde*
123–86–4	n–Butyl acetate*
124–40–3	Dimethyl amine*
124–63–0	Methanesulfonyl chloride
124–65–2	Sodium cacodylate
129–00–0	Pyrene
131–11–3	Dimethyl phthalate
140–88–5	Ethyl acrylate*
141–32–2	Butylacrylate*
141–43–5	Monoethanolamine
141–59–3	t-Octyl mercaptan
141–66–2	Dicrotophos
141–78–6	Ethyl acetate*
143–33–9	Sodium cyanide*
144–62–7	Oxalic acid
149–74–6	Dichloromethylphenyl silane
150–76–5	p-Methoxyphenol
151–38–2	Methoxyethyl mercury*
207–08–9	Benzo(k)fluoranthene
218–01–9	Chrysene
287–92–3	Cyclopentane
297–78–9	Isobenzan
298–00–0	Methyl parathion*
298–02–2	Phorate*
298–04–4	Disulfoton*
300–62–9	Amphetamine
333–41–5	Diazinon
334–88–3	Diazomethane*
353–50–4	Carbonyl fluoride*
354–32–5	Trifluoroacetyl chloride
371–62–0	Ethylene fluorohydrin
382–21–8	Perfluoroisobutylenene
453–18–9	Methyl fluoroacetate*
460–19–5	Cyanogen*
463–51–4	Ketene*
463–58–1	Carbonyl sulfide*
463–71–8	Thiophosgene
503–38–8	Diphosgene
506–68–3	Cyanogen bromide*
506–78–5	Cyanogen iodide
506–96–7	Acetyl bromide
534–52–1	4,6-Dinitro-o-cresol
538–07–8	Bis(2-chloroethyl)ethylamine
541–25–3	Lewisite
541–41–3	Ethyl chloroformate*
542–88–1	bis-Chloromethyl ether*
543-27-1	i-Butyl chloroformate
555-77-1	Tris(2-chloroethyl)amine (N-Mustard)
556–61–6	Methyl isothiocyanate
556–64–9	Methyl thiocyanate*
563–12–2	Ethion
578–94–9	Adamsite
592–34–7	n-Butyl chloroformate
593–53–3	Methyl fluoride
593–89–5	Methyl dichloroarsine
598–14–1	Ethyl dichloroarsine
598–31–2	Bromoacetone

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT—Continued

CAS No.	Chemical Name
622–44–6	Phenyl carbylamine chloride
624–92–0	Dimethyl disulfide*
625–55–8	Isopropyl formate
627–44–1	Diethyl mercury
640–19–7	Fluoroacetamide
646–06–0	Diulane
674–82–8	Diketene*
675–14–9	Cyanuric fluoride
676–83–5	Methyl phosphonous dichloride
676–97–1	Methyl phosphonic dichloride
681–84–5	Tetamethoxysilane
684–16–2	Hexafluoroacetone*
696–28–6	Phenyl dichloroarsine
732–11–6	Phosmet
757–58–4	Hexaethyl tetraphosphate
813–78–5	Dimethyl phosphate
919–86–8	Demeton S–methyl
920–46–7	Methacryloyl chloride
944–22–9	Fonofos*
950–37–8	Methidathion*
993–00–0	Methyl chlorosilane*
993–13–5	Methylphosphonic acid
993–43–1	Ethylphosphonodithioicdichloride
999–81–5	Clormequat chloride
1024–57–3	Heptachlor epoxide
1120–71–4	1,3-Propane sultone
1303–28–2	Arsenic pentoxide
1306–02–1	Lewisite oxide
1314–84–7	Zinc phosphide
1319–77–3	Cresol*
1327–53–3	Arsenic trioxide*
1336–36–3	Polychlorinated biphenyl
1341–24–8	Chloroacetophenone*
1341–49–7	Ammonium bifluoride
1397–94–0	Antimycin A
1498–40–4	Ethylphosphonous dichloride
1498–51–7	Ethylphosphorodichloridate
1558–25–4	Chloromethyl (trichloro) silane
1563–66–2	Carbofuran*
1582–09–8	Trifluralin
1609–86–5	t-Butyl isocyanate
1634–04–4	Methyl t-butyl ether*
1675–54–3	Bisphenol A diglycidyl ether
1737–93–5	3,5-Dichloro-2,4,5-trifluoropyridine
1746–01–6	2,3,7,8-Tetrachlorodibenzo-p-dioxin*
1832–54–8	Isopropyl methyl phosphonic acid
1873–29–6	Isobutyl isocyanate
1910–42–5	Paraquat dichloride*
2032–65–7	Methiocarb
2231–57–4	Thiocarbazide
2487–90–3	Trimethoxysilane
2524–03–0	Dimethyl phosphorochloridothioate
2696–92–6	Nitrosyl chloride*
2698–41–1	o-Chlorobenzylidene malononitrile*
2699–79–8	Sulfuryl fluoride*
2937–50–0	Allylchloroformate
2941–64–2	Ethyl chlorothioformate
3048–64–4	Vinyl norbornene
3173–53–3	Cyclohexyl isocyanate*
3282–30–2	Trimethylacetyl chloride
3689–24–5	Tetraethyl dithiopyrophosphate (Sulfotep)*
3691–35–8	Chlorophacinone
4098–71–9	Isophorone diisocyanate
4109–96–0	Dichlorosilane
4300–97–4	Chloropivaloyl chloride
4418–66–0	Phenol, 2,2'-thiobis(4-chloro-6-methyl-)
5332–73–0	3-Methoxypropyl amine
5798–79–8	Bromobenzyl cyanide
6427–21–0	Methoxymethyl isocyanate
6581–06–2	3-Quinuclidinyl benzilate
6923–22–4	Monocrotophos*
7439–92–1	Lead & compounds including lead phosphate*

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT—Continued

CAS No.	Chemical Name
7439–96–5	Manganese & compounds
7439–97–6	Mercury & compounds including methyl mercury*
7440–02–0	Nickel and compounds*
7440–38–2	Arsenic & compounds*
7440–39–3	Barium & compounds
7440–41–7	Beryllium & compounds*
7440–43–9	Cadmium & compounds*
7440–48–4	Cobalt & compounds
7440–50–8	Copper & compounds
7440–62–2	Vanadium & compounds
7440–66–6	Zinc & compounds
7446–18–6	Thallium sulfate*
7446–70–0	Aluminum chloride
7521–80–4	Butyltrichlorosilane
7550–45–0	Titanium tetrachloride*
7580–67–8	Lithium hydride
7616–94–6	Perchloryl fluoride
7631–89–2	Sodium arsenate
7647–19–0	Phosphorus pentafluoride*
7664–38–2	Phosphoric acid*
7705–07–9	Titanium chloride
7719–09–7	Thionyl chloride*
7722–84–1	Hydrogen peroxide (concentration greater than 52%)*
7723–14–0	Phosphorus
7727–15–3	Aluminum bromide
7738–94–5	Chromic acid
7782–65–2	Germane
7782–68–5	Iodic acid
7783–07–5	Hydrogen selenide*
7783–41–7	Oxygen difluoride*
7783–54–2	Nitrogen trifluoride*
7783–61–1	Silicon tetrafluoride*
7783–70–2	Antimony pentafluoride
7783–71–3	Tantalum V fluoride
7783–79–1	Selenium hexafluoride*
7783–80–4	Tellurium hexafluoride*
7783–82–6	Tungsten hexafluoride
7784–46–5	Sodium arsenite*
7786–34–7	Mevinphos*
7787–71–5	Bromine trifluoride*
7789–21–1	Fluorosulfonic acid
7789–30–2	Bromine pentafluoride*
7789–59–5	Phosphorus oxybromide
7789–69–7	Phosphorus pentabromide
7789–75–5	Calcium fluoride
7790–94–5	Chlorosulfonic acid*
7791–23–3	Selenium oxychloride
7791–25–5	Sulfuryl chloride*
7803–49–8	Hydroxylamine*
7803–52–3	Stibine (antimony hydride)*
7803–62–5	Silane*
8001–35–2	Camphechlor
8006–61–9	Gasoline*
10025–67–9	Disulfur dichloride
10025–73–7	Chromic chloride
10026–13–8	Phosphorus pentachloride
10028–15–6	Ozone*
10034–85–2	Hydrogen iodide*
10035–10–6	Hydrogen bromide*
10265–92–6	Methamidophos*
10294–33–4	Boron tribromide*
10544–72–6	Nitrogen tetroxide
10544–73–7	Nitrogen trioxide
10545–99–0	Sulfur dichloride*
11099–02–8	Nickel oxide*
12002–03–8	Copper acetoarsenite*
12108–13–3	Manganese, tricarbonyl methylcyclopentadienyl
13071–79–9	Terbufos*
13194–48–4	Ethoprophos
13470–08–1	Titanium III fluoride
13637–63–3	Chlorine pentafluoride*
13863–41–7	Bromine chloride*

TABLE 1.—SECOND LIST OF AEGL PRIORITY CHEMICALS FOR GUIDELINE DEVELOPMENT—Continued

CAS No.	Chemical Name
16752–77–5	Methomyl*
17462–58–7	iso-Butyl chloroformate
19624–22–7	Pentaborane*
20816–12–0	Osmium tetroxide*
20859–73–8	Aluminum phosphide*
22224–92–6	Fenamiphos
22967–92–6	Methyl mercury
23135–22–0	Oxamyl
23422–53–9	Formetanate hydrochloride
25321–14–6	Dinitrotoluene
25321–22–6	Dichlorobenzene
26419–73–8	Tirpate
27137–85–5	Trichloro (dichlorophenyl) silane
28772–56–7	Bromodiolone
30674–80–7	Methacryloyloxyethyl isocyanate
32315–10–9	Triphosgene

*Indicates Higher Current Priority

List of Subjects

Environmental protection.

Dated: May 23, 2002.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 02–13700 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7221–2]

Sole Source Aquifer Petition Denial

AGENCY: Environmental Protection Agency.

ACTION: Notice of sole source aquifer petition denial.

SUMMARY: The United States Environmental Protection Agency (EPA) today provides notice that it denies a petition to designate the La Cienega Valley Area Aquifer a Sole Source Aquifer. The aquifer is not eligible for designation because it is not the principal source of drinking water for the area covered by the petition.

ADDRESSES: The administrative record underlying today's decision is available for inspection and copying in the offices of EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the record or portions thereof may also be obtained by mailing a written request to Region 6 and payment of a reasonable fee for copying. EPA has also posted a fact sheet, summary of public comments and responses, and a decision support document on its website at *http://www.epa.gov/earth1r6/6wq/swp/index.htm.*

FOR FURTHER INFORMATION CONTACT: Clay Chesney, geologist, Source Water Protection Branch (6WQ-SG), EPA Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, phone (214) 665–7128, *chesney.claybourne@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 1424(e) of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300h–3(e), EPA may designate an aquifer a ''sole source aquifer'' if it serves as the sole or principal drinking water source for an area and contamination of that aquifer would create a significant hazard to public health. EPA may essentially ''veto'' financial assistance proposed by other Federal agencies for projects it finds may contaminate such a designated aquifer. To date, EPA has designated 72 sole source aquifers.

On October 25, 2000, EPA received a petition for sole source aquifer designation from the La Cienega Valley Citizens for Environmental Safeguards. The petition sought designation for the La Cienega Valley Area Aquifer, which covers approximately 320 square miles in north-central New Mexico including the City of Santa Fe. To show the aquifer was the primary source of drinking water for the area, the petitioner relied on documentation of water rights allocated to water users by the New Mexico State Engineer.

EPA published notice of the petition in the Albuquerque Journal and the Santa Fe New Mexican and requested comments thereon. It received a number of comments and carefully considered them in reaching today's decision. EPA also performed an independent review of the hydrology and water use in the area covered by the petition. The Agency concludes that the State Engineer's water rights allocations do not reflect actual usage of drinking water in the area covered by the petition and that approximately 61% of such drinking water is derived from sources other than the aquifer, i.e., the Santa Fe River and wells outside the area proposed for designation. EPA thus denies the petition.

Dated: May 20, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–13696 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7221–3]

Public Water System Supervision Program Revision for the State of Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Mississippi is revising its approved Public Water System Supervision Program. Mississippi has adopted drinking water regulations for Lead and Copper Minor Revision. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by July 1, 2002, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 1, 2002, a public hearing will be

held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 1, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Mississippi State Department of Health, Office of Environmental Health, Division of Water Supply, 570 E. Woodrow Wilson Blvd., Underwood Building, Suite 232, Jackson, Mississippi 39215–1700 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Shaun McMullen, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9294.

Authority: (Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated: May 7, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–13697 Filed 5–30–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 22, 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 July 30, 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 *jboley@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 *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0185.

Title: Section 73.3613, Filing of Contracts.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,080.

Estimated Time Per Response: .50–.75 hours.

Frequency of Response: On occasion reporting requirement, and recordkeeping requirement.

Total Annual Burden: 910 hours.

Annual Reporting and Recordkeeping Cost Burden: $52,000.

Needs and Uses: Section 73.3613 requires that licensees of TV and low power TV broadcast stations file copies of network affiliation contracts, instruments, and documents together with amendments, supplements and cancellations with the FCC. In addition, all radio and full service TV broadcast station licensees are required to file contracts, instruments or documents relating to ownership or control and certain personnel agreements with the Commission. Section 73.3613 also requires licensees to file, within 30 days of execution, a copy of any radio time brokerage agreement which would result in the arrangement being counted in determining the brokering licensee's compliance with local and national multiple ownership rules with the FCC. Certain contracts, agreements or understandings need not be filed with the FCC under Section 73.3613(e), but must be retained at the station and be made available for inspection upon request by the FCC. The contracts filed with the FCC and filed in the station file are used by FCC staff to assure that a licensee maintains full control over the operation and maintenance of the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–13647 Filed 5–30–02; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

President's Homeland Security Advisory Council

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The President's Homeland Security Advisory Council (PHSAC or Council) will meet in partially closed session on Wednesday, June 12, 2002, in Washington, DC. The PHSAC will meet for the purposes of: (1) Welcoming and introducing the members of the Council; (2) reinforcing the necessity and urgency of developing and coordinating the implementation of a comprehensive national strategy on homeland security; (3) holding roundtable discussions with and among Council members; (4) receiving briefings by senior government officials on the state of homeland security; and (5) discussing and reviewing the draft national strategy for homeland security. The open portion of the meeting, for purposes (1) and (2) above and certain discussions of purposes (3) through (5) above, will be held in the Indian Treaty Room of the Eisenhower Executive Office Building,

725 Seventeenth Street, NW., from 9 to 11:10 a.m. The closed portion of the meeting, for certain discussions of purposes (3) through (5) above, will be held in the White House, 1600 Pennsylvania Ave., NW., from 11:30 a.m. to 3 p.m.

Objectives

The President's Homeland Security Advisory Council was established by Executive Order 13260 (67 FR 13241, March 21, 2002). The objectives of the PHSAC are to provide advice and recommendations to the President of the United States through the Assistant to the President for Homeland Security (Assistant), on matters relating to homeland security.

Due to critical mission and schedule requirements, there is insufficient time to provide the full 15 calendar days notice in the **Federal Register** prior to advisory committee meetings, pursuant to the final rule on Federal Advisory Committee Management codified at 41 CFR 102–3.150. Moreover, in accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), it has been determined that this PHSAC meeting concerns matters sensitive to homeland security within the meaning of 5 U.S.C. 552b(c)(7) and (9)(B) and that, accordingly, the meeting will be partially closed to the public. In addition, due to the security requirements of the Eisenhower Executive Office Building, any members of the public who wish to attend this meeting of the President's Homeland Security Advisory Council must provide their name, social security number, and date of birth no later than 5:00 p.m. EDT, Friday, June 7, 2002, to Mr. Fred Butterfield, General Services Administration, phone: (202) 273–3566, or e-mail: *fred.butterfield@gsa.gov.* Photo identification will be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. Furthermore, members of the public who wish to file a written statement with the PHSAC may do so either in person or send it to Fred Butterfield via the e-mail address provided immediately above or at the following mailing address: General Services Administration (GSA/MC, Room G230), 1800 F St., NW., Washington, DC 20405.

Dated: May 28, 2002.

James L. Dean,

Director, Committee Management Secretariat, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 02–13857 Filed 5–30–02; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02172]

Surveillance and Epidemiologic Research of Duchenne and Becker Muscular Dystrophy and Other Single Gene Disorders; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program on surveillance and epidemiologic research of (1) Duchenne and Becker Muscular Dystrophy (DBMD) and other single gene disorders, and (2) genetic and other disorders identified through tandem mass spectrometry and other newborn screening technologies. This program addresses the ''Healthy People 2010'' priority areas for Disability and Secondary Conditions.

The purpose of the program is to: (1) Develop and/or expand surveillance systems to characterize the epidemiology of DBMD and other single gene disorders and their complications; and (2) develop long-term follow-up tracking of children identified through tandem mass spectrometry and other newborn screening technologies.

This program consists of two types of projects (Type I and Type II):

Type I: Surveillance and Tracking of DBMD and Other Single Gene Disorders Without Universal Screening Programs

The purpose of Type I funding is to determine the prevalence of DBMD and other single gene disorders that are not detected through newborn screening programs and that therefore require active case finding activities. Long-term population-based follow-up research activities will be planned to describe history of treated and/or untreated cases, and to determine factors that affect the outcome of the condition among three populations: (a) Those who access care at specialty clinics (*e.g.,* Muscular Dystrophy Association (MDA) or other muscular dystrophy clinics), (b) those who receive their care elsewhere, and (c) those who are not receiving care or are undiagnosed.

Type II: Surveillance and Tracking of Conditions With Universal Screening Programs

The purpose of Type II funding is to determine the prevalence of single gene or other conditions identified using existing or potential newborn screening programs, and to conduct population-based long-term follow-up research to describe the history of treated and/or untreated cases. Potential newborn screening programs include, but are not limited to, newborn blood spot screening using tandem mass spectrometry.

Quantifiable outcomes of the cooperative agreement will be measured against the following Government Performance Results Act performance goal: To find causes and risk factors for birth defects and developmental disabilities in order to develop prevention strategies.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 311 and 317(C) of the Public Health Service Act [42 U.S.C. 241, 243, and 247b–4 as amended]. The Catalog of Federal Domestic Assistance number is 93.184.

C. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

To be eligible, applicants must document a study population of at least 30,000 live births per year within a State, a contiguous area of a State (such as the catchment of a local health agency), or a contiguous area comprising a combination of States, based on U.S. Census Data. This information should be placed directly behind the face page of the application. Applications that fail to submit the evidence requested above will be considered non-responsive and returned without review.

If an applicant chooses to apply for both a Type I and a Type II award, a separate complete application must be submitted for each type.

Note: Title 2 of the United States Code, Section 1611 states that an organization

described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

D. Availability of Funds

Approximately $1,600,000 is available in FY 2002 funding to fund up to five awards. It is expected that up to three Type I awards will be made, ranging from $350,000 to $450,000, and that up to two Type II awards will be made, ranging from $100,000 to $150,000. It is expected that the award will begin on or about September 1, 2002, and will be made for a 12-month budget period within a three year project period. Funding estimates may change.

Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

Funding preference will include: (1) Geographic balance, (2) Type I programs that target DBMD, and (3) Type II programs that target fatty acid oxidation and/or organic acid disorders.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities for Type I projects or 2. Recipient Activities for Type II projects. CDC will be responsible for the activities listed under 3. CDC Activities.

1. Recipient Activities for Type I Projects

a. Develop, implement and evaluate methods and approaches that will improve or expand the capacity of the applicant's existing surveillance system to ascertain cases and generate timely population-based data of DBMD and other single gene disorders and their complications.

b. Establish or enhance collaborative relationships with appropriate stakeholders, *i.e.,* specialty treatment centers (*e.g.,* MDA clinics, other muscular dystrophy clinics), state or regional chapters or associations related to genetic conditions, hospitals, emergency care centers, private physicians, managed care organizations, clinical and diagnostic laboratories that provide diagnosis of genetic conditions (*e.g.,* creatine kinase measurements, muscle biopsy analysis, genetic analysis, etc.), and others.

c. Collaborate with other Type I funded recipients to design and develop one common protocol for all recipients to implement and evaluate.

d. Implement active case ascertainment of DBMD and other genetic condition(s) among reporting sources to determine the prevalence of the genetic condition(s) in the defined geographic area, including a complete count of all prevalent cases, including ages birth to 21 years, and supplemented in later years by newly diagnosed cases.

e. Describe the source, frequency, and type of preventive and medical care among persons with DBMD and other genetic condition(s), among three populations: (a) Those who access care at specialty clinics (*e.g.,* MDA or other muscular dystrophy clinics), (b) those who receive their care elsewhere, and (c) those who are not receiving care or are undiagnosed.

f. Determine the prevalence of related complications.

g. Conduct population-based long-term follow-up of persons with DBMD and other genetic condition(s) to relate health outcomes to the source, frequency, and type of preventive and therapeutic care.

h. Obtain buccal samples or other biologics, as agreed upon by awardees, from children with DBMD and genetic conditions and other family members.

i. Evaluate and disseminate the findings.

2. Recipient Activities for Type II Projects

a. Collaborate with other Type II funded recipients to design and develop one common protocol for all recipients to implement and evaluate.

b. Describe the source, frequency, type of and access to preventive and medical care among persons with the genetic condition(s), and determine the prevalence of related complications.

c. Conduct population-based long-term follow-up of persons with genetic condition(s) to relate health outcomes to the source, frequency, type of, and access to preventive and therapeutic care, including both primary and specialty care settings.

d. Assess the option of obtaining buccal samples or other biologics, as agreed upon by awardees, from children with the genetic condition(s) and other family members.

e. Evaluate and disseminate the findings.

3. CDC Activities

a. Participate in designing, developing, and evaluating methodologies and approaches used for population-based surveillance of genetic conditions.

b. Participate in the collection, management, and analysis of surveillance data related to genetic conditions.

c. Participate in the development and planning of the study protocol. Provide final approval for the study protocol.

d. Assist in the analysis and reporting of aggregate surveillance data collected from funded initiatives; coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among recipients.

e. Assist national, state, or regional programs in the use of data to develop or improve care programs for genetic conditions.

f. Assist recipients in developing a plan for the collection, storage and access of biologic samples.

g. Assist recipients in the evaluation and dissemination of the findings.

F. Content

Letter of Intent (LOI)

A LOI is requested for this program. The LOI will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest and plan the review more efficiently. The LOI should be no more than two, double-spaced pages, printed on one side, with one-inch margins and 12 point font. The LOI should denote the intent to submit a Type I or Type II application, and should include the following information: program announcement number; applicant's name and address; project director's name, phone number, and e-mail address; a brief description of the number of births in the defined geographic region; and a brief description of the planned cooperative agreement activities.

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The proposal narrative (excluding budget narrative and any appendices) should be no more than 35 double-spaced pages, printed on one side, with one inch margins, and 12 point font. Number each page consecutively and provide a complete table of contents.

The application should contain the following:

1. Executive Summary (one page, may be single spaced):

This section should briefly summarize:

a. Type of request (I or II).

b. Amount of federal assistance requested.

c. Existing capacity.

d. Key objectives and activities.

2. Proposal Narrative:

a. Introduction, statement of need, proposed goals and objectives.

b. Existing program and capacity.

c. Proposed methods and activities.

d. Project management and project staff.

e. Proposed methods to evaluate the attainment of objectives.

3. Budget Narrative.

4. Human Subjects.

5. Appendices, which may include letters of commitment from key collaborators (including specialty clinics such as MDA clinics and other muscular dystrophy clinics), resumes of key staff, brief summary reports of analyses of surveillance data for other genetic conditions.

G. Submission and Deadline

Letter of Intent

On or before June 28, 2002, submit the LOI to the Program Officer listed as the point of contact for programmatic technical assistance identified in the Where to Obtain Additional Information section of this announcement.

Application

On or before 5:00 p.m. Eastern Time August 2, 2002, submit the original and two copies of PHS–5161 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

Submit the application to: Technical Information Management-PA02172, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disaster, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section ''A. Purpose'' of this announcement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated and scored individually by an objective review panel. Evaluations and scoring will be conducted according to the following criteria:

1. Methods and Activities (30 Points)

a. The quality of the applicant's plan for conducting program activities and the extent to which surveillance methods proposed are: (1) Appropriate to accomplish stated goals and objectives; (2) adaptable to a variety of health care settings, and to the collection of longitudinal data; (3) accurate to produce valid and reliable data, and (4) feasible within programmatic and fiscal restrictions.

b. The applicant's willingness to cooperate with CDC and other funded applicants to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and database software, and (3) modify proposed methods and activities to conform to standardized protocols.

2. Capacity (20 Points)

a. The extent to which the applicant can access the state or regional community with genetic conditions that is receiving care within and outside of the specialty clinics (e.g., MDA and other muscular dystrophy clinics), as measured by (1) the extent that this proposal incorporates shared responsibility between specialty clinics and state or local health departments as delineated in letters of agreement; and (2) the extent of collaboration obtained from these entities with other organizations involved in the delivery of care and/or services to persons with genetic conditions.

b. A copy of the State Legislation that allows the authority for State Health Departments to collect information on birth defects, genetic diseases or related conditions needs to be included.

3. Goals and Objectives (20 Points)

The extent to which the project goals and objectives are relevant, specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

4. Management and Staffing (20 Points)

a. The extent to which the scientific resources for project planning and data management/analysis are demonstrated within the applicant's organization or through collaboration with universities or other agencies.

b. The extent to which proposed staffing, staff qualifications and experience, and project organization indicates ability to accomplish the active case findings and other objectives of the program.

5. Evaluation (10 Points)

The degree to which the applicant includes plans to evaluate the attainment of proposed objectives and to evaluate the quality of the data collected.

6. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks are so inadequate as to make the entire application unacceptable.)

7. Budget (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports which should include:

a. Brief project description.

b. Comparison of the actual accomplishments to the goals and objectives established for the period.

c. Data requirement that demonstrates measures of effectiveness. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity from the project.

d. Other pertinent information, including preliminary findings from the analysis of available data.

e. Financial recap of obligated dollars to date as a percentage of total available funds.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the Application Kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–22—Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address http://www.cdc.gov. Click on Funding then Grants and Cooperative Agreements.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl L. Heard, Grants Management Specialist, Acquisition and Assistance Branch B, Centers for Disease Control and Prevention, Announcement 02172, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2723, Email address: slh3@cdc.gov.

Programmatic technical assistance may be obtained from: William Ramsey, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention, 4770 Buford Highway N.E. MailStop F–15, Atlanta, GA 30341–3724, Telephone: (770) 488–7226, Email address: *wkr1@cdc.gov.*

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13632 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02100]

University Technical Assistance Projects in Support of the Global AIDS Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) Global AIDS Program (GAP) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for providing technical assistance to ministries of health and other organizations working on HIV/AIDS prevention and HIV/AIDS care and treatment programs in 25 countries in Africa, the Caribbean, South America and Asia that are participating in CDC's Global AIDS Program (GAP). This program addresses the international goal and objectives contained in CDC's Five-Year HIV Prevention Strategic Plan:

Goal: Reduce HIV transmission and improving HIV/AIDS care and support in partnership with resource-constrained countries.

Objectives:

1. Decrease sexually transmitted HIV infections.

2. Develop the capacity of partners in host countries for prevention and care efforts.

3. Expanding and strengthening HIV/STD/TB surveillance programs.

4. Improve basic scientific knowledge of HIV and the safety and efficacy of newly developed biomedical interventions.

5. Decrease HIV infections transmitted from mother to child.

6. Increase access to improved HIV care and support, including prevention and treatment of opportunistic infections.

7. Decrease parenterally transmitted HIV infections.

Additional information on the strategic plan is available at: *http://www.cdc.gov/hiv/pubs.htm#prevention.*

Future iterations of this program announcement will reflect the results of the current process GAP is undertaking to identify priorities in accomplishing the goal and objectives of the strategic plan.

The purpose of this program is to augment and expand CDC's efforts to provide technical assistance to GAP countries in the development, implementation and evaluation of HIV prevention programs, care and treatment programs and the necessary infrastructure (*e.g.,* laboratory services) to support prevention and care programs and services.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 (k)(2) of the Public Health Service Act, [42 U.S.C. section 241 (a) and 247 (k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943. There are no matching requirements for this program announcement.

C. Eligible Applicants

Eligible applicants include universities and colleges, based in the U.S. that have medical schools or colleges, schools of nursing, and/or schools or departments of public health; with at least one year of experience in providing technical assistance to an international public health project or a governmental or non-governmental organization working on a public health problem in a foreign country. Applications may be submitted by public and private universities in the U.S. including the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau.

D. Availability of Funds

Approximately $4,000,000 is available in FY 2002 to fund approximately five awards. It is expected that the average award will be $750,000, ranging from $500,000 to $1,000,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made in the basis of satisfactory progress as evidenced by required reports and the availability of funds.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''1. Recipient activities'' and CDC will be responsible for activities listed under ''2. CDC activities.''

Activities eligible for support include providing faculty, staff and students to work in cooperation with CDC and host country governments to assist in:

1. Recipient Activities:

a. Design, conduct and evaluate training activities relevant to HIV/AIDS prevention, care and treatment and/or program infrastructure development.

These training activities should mostly be conducted within the host country, but proposals could also be made for short-term training within the United States of key country program staff in areas critical to their program responsibilities. Examples of other supportable activities include designing and assisting in implementing ''train-the-trainer'' programs, developing curricula and training materials in the appropriate language, providing technical assistance regarding behavioral science and science-based interventions for populations at risk, blood safety, and developing and implementing informatics systems.

b. Design, implement, and evaluate strategies to expand the scope of successful HIV prevention, care and treatment, or infrastructure development projects to have an impact on large populations and be sustained beyond the project period.

Examples of supportable activities include expanding successful pilot projects to prevent mother-to-child transmission of HIV or provide home and community-based health care into national programs, and developing national-level community empowerment models to guide local responses to HIV prevention and care.

c. Operational research with the goals of assessing HIV prevention or relevant care and treatment needs and providing findings that can be used to design and develop new or innovative program efforts or services.

d. Conduct reviews and program evaluation activities of HIV prevention or care and treatment program progress, services and achievements.

Such reviews may assess the entire country program effort or be focused on specific components.

e. Provide technical assistance in implementing HIV prevention, care and treatment programs, in infrastructure and capacity development to support such programs, and in monitoring and evaluation at program and/or national levels.

2. CDC Activities

a. Provide information to recipients regarding GAP goals, progress, country needs and other information relevant to the recipient's activities.

b. Facilitate coordination with other organizations both domestic, international and in GAP countries who are working with CDC on HIV prevention and care activities.

c. Where needed, provide consultation, training and technical support to University Staff participating to help them prepare to meet programmatic needs of GAP.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than three single-spaced pages, printed on one side with one-inch margins, and unreduced font. Your letter of intent will be used to determine eligibility and pre-application technical assistance needs, and should include a brief description of the university, its international programs and/or experience a brief summary of the proposed activities.

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as states in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcomes. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods and Evaluation Plan and Budget.

Eligible universities may submit proposals that involve projects related to HIV prevention, care and treatment and/or program infrastructure development. Universities should describe international experience relevant to the proposed HIV/AIDS-related activities, history of collaboration with host governments or other in-country organizations on such activities and what capabilities and resources they can marshal to work with and augment the efforts of CDC. As monitoring and evaluation (M&E) is integral to all GAP activities, universities should include in their proposals their specific experience with M&E activities (including M&E at project and/or national levels; use of quantitative and/or qualitative methods; utilization of M&E data). Proposals may indicate countries for which activities may be targeted or needed, but CDC may request the University to work with it on projects in other countries with greater or more relevant needs.

G. Submission and Deadline

Letter of Intent (LOI)

On or before July 8, 2002, submit the LOI to the Grants Management Specialist identified in the ''Where to Obtain Additional Information.'' Section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

On or before 5 p.m. Eastern Time, July 30, 2002, submit the application to:

Technical Information Management, PA #02100, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of Intent and applications will be considered as meeting the deadline if they are received on or before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded.

H. Evaluation Criteria

Letter of Intent (LOI)

The letter of intent will be reviewed only to ensure that the applicant is an eligible university that has a medical school or college, school of nursing, and/or school or department of public health and to determine needs for pre-application technical assistance.

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. The criteria below will be applied in reviewing and

evaluating your proposal. For example, if you propose to provide support to design and assist in the implementation of a voluntary HIV prevention counseling and testing program (VCT), your proposal should specify the capabilities, experience, degree that the proposed VCT program would enhance CDC efforts and be feasible, innovative and relevant to country needs.

1. The degree that the applicant university has demonstrated that it has the relevant capabilities to provide technical assistance and augment CDC's efforts to provide technical support to GAP country programs. (20 points)

2. Past experience of the university in developing or providing technical assistance and related support to HIV/AIDS or relevant public health programs. Both the applicant's relevant international and domestic experience will be considered. (20 points)

3. The degree that the proposal of the applicant university, if implemented, addresses identified priorities CDC's planned technical assistance to GAP countries, and is likely to enhance and be well coordinated with GAP's activities, and the need for geographic (Africa, Asia and South America/Caribbean regions) and programmatic (prevention, care and treatment, infrastructure development foci) balance within the GAP program. (20 points)

4. The degree that the proposed activities are feasible, innovative and relevant to country needs. (15 points)

5. Past experience of the university in developing and implementing appropriate monitoring and evaluation procedures and/or in providing technical assistance on M&E activities at program and/or national levels The applicant's relevant domestic and international experience will be considered. (15 points)

6. The extent that the applicant is willing to provide university resources (both financial and in kind) to support the project. (10 points)

7. The extent that the budget is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized. (not scored)

8. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (not scored)

_____Yes _____No Comments:

An application can be disapproved if research risks are sufficiently serious and protection against risks is deemed insufficient.

Applications under consideration for funding will be provided to the appropriate CDC country office and the host country Ministry of Health for additional review.

These reviews will focus on the degree to which the proposal is needed, is consistent with country priorities and the National AIDS Control Plan, and coordinated with and nonduplicative of other activities. Findings from this review will be used to make final funding decisions and as the basis of negotiations concerning the final program plan.

Pre-application Technical Assistance:

Pre-application technical assistance can be obtained through three means: (1) Applicants may call CDC at (404) 639–8016 and talk with a CDC representative to obtain background information; (2) The CDC Global AIDS Program website *www.cdc.gov/nchstp/od/gap* will include background information relevant to applicants and (3) for those applicants who provide an LOI, CDC will hold a pre-application technical assistance workshop and based on volume of calls and inquiries audio conference calls may be scheduled prior to the application due date. Information on the date and location of the workshop will be provided directly to each applicant who submits an LOI and posted on the CDC website.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of the following:

1. Annual progress report.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and quantitative and must measure the intended outcome.

The submission of these measures will be a data element to be submitted with, or incorporated into the annual progress reports.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see attachment I of this announcement.

AR–1 Human Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact:

Dorimar Rosado, Grants Management Specialist, International & Territories Acquisition and Assistance Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, email address: *drosado@cdc.gov*.

For program technical assistance, contact: Gary R. West, Global AIDS Program, National Center for HIV, STD and TB Prevention, 1600 Clifton Road, Mailstop E–07, Atlanta, GA 30333, Telephone number: 404–639–8016, email address: *GAW2@cdc.gov*.

Dated: May 24, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–13634 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02190]

Support for Strengthening Voluntary Counseling and Testing Services and Expansion of Tuberculosis (TB) Diagnosis, Treatment and Prevention in the Republic of Uganda; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to strengthen the capacity of existing voluntary counseling and testing (VCT) services and to expand TB diagnosis, treatment, referral and prevention within VCT sites in the Republic of Uganda.

Goals

1. Improve the quality and expand laboratory and data management capacity in four stand-alone VCT sites that provide VCT services to their own clients and technical and program support to affiliated VCT sites in the Republic of Uganda.

2. Support TB diagnosis, treatment, and prevention activities in the four main sites while screening and referral will be provided in the affiliated sites.

3. Support other targeted HIV/AIDS prevention and care interventions within the context of VCT services at these centers.

CDC has established partnerships with local and international non-governmental organizations, the Ugandan Ministry of Health, and the Uganda AIDS Commission in discovering and applying effective interventions to prevent HIV infection and associated opportunistic infections and subsequent deaths from Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS).

As a key partner in the United States (U.S.) Government's international activities, CDC is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic in many countries.

TB prevention and treatment programs that are provided in an integrated manner in an existing VCT service is one potential way of improving current VCT services in Uganda. Tuberculosis diagnosis, treatment, and prophylaxis using Isoniazid for Purified Protein Derivative (PPD) positive persons with HIV have been shown to be feasible to add to existing VCT services in Uganda.

This program will also support the documentation and production of counseling protocols adapted to address new psycho-social needs related to (VCT). This will contribute to improvements in counseling provided to individuals and couples.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Global AIDS Program (GAP):

Reduce the number of new HIV infections among 15 to 24 year olds in sub-Saharan Africa from an estimated two million by 2005 by working with other countries, United States Agency for International Development (USAID), international, and U.S. government agencies.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, [42 U.S.C. section 242l], as amended. The Catalog of Federal Domestic Assistance number is 93.118. There are no matching requirements for this program announcement.

C. Eligible Applicants

Assistance will be provided only to Ugandan non-governmental organizations with more than five years of experience in the implementation of voluntary counseling and testing services in multiple rural locations of Uganda. The applicants should have at least one year of experience in implementing an integrated TB program within existing VCT services.

D. Availability of Funds

Approximately U.S. $200,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about August 30, 2002 and will be made for a 12-month budget period within a project period of three (3) years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may only be utilized to implement activities as described in the goals, objectives, and activities of the submitted and funded program.

The purchase of antiretroviral, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program Headquarters.

Applicants may contract with other organizations under this cooperative agreement, however, applicants must perform a substantial portion of the activities (including program management and operations and delivery of prevention services for which funds are requested).

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, will be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act will be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under ''1. Recipient Activities,'' and CDC will be responsible for the activities listed under ''2. CDC Activities.''

1. Recipient Activities

a. Identify staffing needs; hire and train staff.

b. Identify and acquire programmatic needs, including space, furnishings, fittings, equipment, and computers.

c. Establish maintenance contracts for program facilities, equipment, and fittings.

d. Carry out training needs assessment for medical and counseling staff as needed.

e. Produce training manuals and referral and treatment algorithms.

f. Identify and subcontract refresher training for all relevant staff in the specific areas identified.

g. Acquire source reagents, and other clinic and laboratory supplies.

h. Develop and implement monitoring and evaluation plans, customized for each program component.

i. Provide training in new content areas through apprenticeships and other skills development methodologies.

j. Procure, supply, and maintain VCT sites with materials required for TB clinical activities.

k. Develop and establish a regular distribution system for diagnostic and other supplies in all participating VCT sites.

l. Schedule regular supervisory visits for new program activities.

m. Develop a data management plan and provide training for all relevant staff.

n. Initiate collaborations with National TB and Leprosy Program, Ministry of Health and other relevant institutions.

o. Establish administrative and management systems for the program.

p. Prepare and submit quarterly progress activity and financial reports.

2. CDC Activities

a. Monitor project and budget performance.

b. Approve the selection of key personnel to be involved in the activities performed under this cooperative agreement.

c. Provide technical assistance in the design and implementation of a monitoring and evaluation plan and other programmatic areas as needed.

d. Assist in the planning for data management and analysis.

e. Participate in training activities.

f. Provide technical and programmatic oversight to the program.

g. Collaborate with recipient in writing papers for publication or other dissemination activities if needed.

F. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with a one-inch margins, and unreduced font.

Each activity for which funds are requested should be specifically identified with goals, Plan, Objectives, Activities, Method of Evaluation and Budget provided. A summary budget by line item should be provided.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 p.m. Eastern Time July 30, 2002, submit the application to: Technical Information Management Section (TIM), PA# 02190, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications will be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: 1. Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or 2. significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually, against the following criteria by an independent review group appointed by CDC.

1. Program Capacity (25 Points)

The proposal should demonstrate capacity and experience needed to implement a project of this magnitude and scope including infrastructure, staffing levels and laboratory capacity.

2. Personnel (25 Points)

The extent that professional personnel involved in this project are qualified including evidence of experience in working in ACT and TB diagnosis, treatment and prevention programs.

3. Program Plan (20 Points)

The proposal demonstrates capacity and plans to rapidly roll out this program to multiple sites in the country.

4. Understanding of the Problem (15 Points)

The extent that the applicants demonstrate a clear and concise understanding of the HIV/AIDS epidemic in Uganda specifically the gaps in current prevention efforts including voluntary counseling and testing.

5. Technical and Programmatic Approach (15 Points)

The extent that the applicants' proposal demonstrates an understanding of how to develop, implement, monitor and evaluate an integrated VCT and TB program.

6. Budget (Will Review But Not Scored)

The extent that the itemized budget for conducting the project is reasonable and well justified.

7. Human Subjects (Not Scored)

The extent that the application adequately addresses the requirements listed in the 45 CFR 46 for the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of the following:

1. Quarterly progress reports. (The progress report will include a data requirement that demonstrates measures of effectiveness.)

2. Final financial and performance reports, no more than 90 days after the end of the project period.

3. Financial status report, no more than 90 days after the end of budget period.

4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement.

Awardee is required to obtain an annual audit of these CDC funds (program specific audit by an audit firm based in the U.S. with international branches and current licensure/authority in country, and in accordance with the international accounting standards of equivalent standards approved in writing by CDC.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the office of management and budget (OMB) under the paperwork reduction act.

A fiscal recipient capability assessment may be required with the potential awardee, prior or post award, in order to review business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to both the program contact in Uganda and Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement. Some of the more complex requirements have additional information provided below:

AR–1—Human Subjects Requirements

AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–4—HIV/AIDS Confidentiality Provisions

AR–6—Patient Care

AR–9—Paperwork Reduction Act Requirements

AR–10—Smoke-Free Workplace Requirements

AR–14—Accounting System Requirements

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: *dpr7@cdc.gov*.

For program technical assistance, contact: Jonathan Mermin, MD, MPH, Global AIDS Program, Uganda Country Team, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, PO Box 49, Entebbe, Uganda, Telephone: +256–410320776, E-mail: *jhm@cdc.gov*.

Dated: May 24, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–13635 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02125]

Cooperative Agreement for Violence Against Women Planning and Implementation; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for planning and implementing state initiatives that address Violence Against Women (VAW). This funding opportunity was created in support of the recommendations set forth in the ''Agenda for the Nation on VAW'' which was developed by the National Advisory Council on VAW (refer to: *http://www.4woman.gov/violence/nations.htm).* This program addresses the Healthy People 2010 priority area of Injury and Violence Prevention.

The purpose of the program is to:

1. Develop effective and culturally competent initiatives that address VAW issues.

2. Foster effective community collaborations to respond to emerging policy and program issues.

3. Provide an opportunity for state health agencies to take a leadership role in addressing violence, specifically VAW to ensure these issues are raised to a public health priority within the state.

4. Facilitate the process of seeking data driven solutions to the prevention of VAW by identifying key data elements that provide compelling evidence of the impact of VAW on families and communities and gaps in data collection that can be addressed by traditional and non-traditional sources.

5. Develop a more comprehensive approach to preventing VAW through community collaboration and coalition building. The planning and implementation projects from this funding should address the intersection of risks for violence that cross the different types of violence (for example, child maltreatment as a risk for sexual violence and intimate partner violence, and identifying community approaches to support protective seeking behaviors that prevent subsequent violence).

6. Identify issues and implementation strategies that address specific challenges and barriers to VAW prevention efforts for priority populations such as racial and ethnic populations, gay and lesbian, elderly, rural or other ''hard to reach'' populations and women with disabilities.

For the purposes of this funding, VAW includes intimate partner violence, sexual violence by any perpetrator, and other forms of VAW committed by acquaintances or strangers.

This program consists of two parts:

Part 1: Planning—To assist recipients to: (1) Conduct an assessment of the state/territory/tribe's current VAW prevention and intervention efforts, and (2) develop a statewide action plan that addresses their intent and documents strategies to garner support for sustaining and enhancing these activities and efforts that address VAW issues.

Part 2: Implementation—To assist recipients, who have developed an action plan that addresses VAW (under CDC Program Announcements 99136 and 00119), to implement priority activities from their action agenda/plan.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Injury Prevention and Control:

1. Reduce VAW.

2. Enhance the capacity of states to implement effective rape prevention and education programs.

B. Eligible Applicants

Part 1: Assistance will be provided only to state health departments or their bona fide agents that have not received funds to support VAW planning activities under the CDC Program Announcements 99136 and 00119, including District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal Governments.

Part 2: Assistance will be provided only to the state health departments or their bona fide agents that have received supplemental funds to support VAW planning activities under CDC Program Announcements 99136 and 00119.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Part 1: Planning

Approximately $1.5 million is available in FY 2002 to fund approximately 29 awards. It is expected that the average award will be $50,000.

It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period with a project period of one year.

There are no matching requirements for this program.

Use of Funds

Appropriate use of funds includes personnel (contractual, consultant, or temporary staff); support for conferences, meetings; support for writing, publishing, and disseminating the results of the plan; and travel to CDC-related training. Funds may not be used for program implementation.

Part 2: Implementation

Approximately $500,000 is available in FY 2002 to fund approximately ten awards. It is expected that the average award will be $50,000.

It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period with a project period of one year.

There are no matching requirements for this program.

Use of Funds

Appropriate use of funds includes personnel (contractual, consultant, or temporary staff); publicity and media events; development of educational or training material and curricula; conducting training workshops and conferences; and travel to CDC-related training.

Funding Preference

Priority consideration will be given to projects proposed by the state injury program or in collaboration with the state injury program for parts 1 and 2.

Pre-Application Conference Call: In addition, for interested applicants, two pre-application technical assistance calls will be held. One for VAW Planning (Part I) applicants and one for VAW Implementation (Part II) applicants. The Part I planning call will be held on Friday, June 7, 2002, from 1:00 p.m. to 2:00 p.m., Eastern Standard Time. The conference name is VAW Planning Workshop and the bridge number for the conference call is 1–800–713–1971, and the pass code is #103902. The Part II planning call will be held on Friday, June 7, 2002, from 2:30 p.m. to 3:30 p.m., Eastern Standard Time. The conference name is VAW Implementation Workshop and the bridge number for the conference call is 1–404–639–3277, and the pass code is #713668.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities:

a. All applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome.

b. Develop, expand, or maintain a VAW advisory committee

c. Participate in CDC Technical Assistance activities such as conference calls, site visits, and training for cooperative agreement recipients.

d. Collaborate with CDC on national campaigns or other relevant national efforts as appropriate.

e. Submit required reports on time.

In addition, there are requirements specific to the type of funding requested:

Part I: Planning

a. Conduct an assessment of the following VAW issues:
   —Policy and Research
   —Prevention Programs
   —Intervention Programs and Victim Services
b. Identify issues and strategies that will garner support for sustaining and enhancing future VAW prevention and intervention activities by addressing the following:
   —Ongoing Collaboration and Community Involvement
   —Ongoing Communication
   —Evaluation
   —Other Issues Associated with VAW
c. Produce and publish an action plan

Part II: Implementation

a. Review the VAW plan developed under Program Announcements 99136 and 00119 and select and carry out activities that can be implemented within the budget period.
b. Establish an evaluation plan for those activities to be implemented.

2. CDC Activities:

a. Provide technical assistance and consultation in the VAW prevention planning and implementation activities.

b. Provide resources and tools that will assist these planning and implementation efforts.

c. Provide opportunities for sharing successes and challenges.

d. Collaborate with national partners to develop protocols for state VAW related data profiles that can be used to facilitate data-driven planning and implementation.

e. Compile state/territory/tribal plans and develop and disseminate ''lessons learned'' to assist with future planning and implementation efforts.

E. Content

The program announcement title and number must appear in the application. Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative (excluding executive summary, budget narrative and any appendices) should be no more than 10 double-spaced pages, printed on one side with one inch margins, and no smaller than 12 point font. Number each page consecutively and provide a complete table of contents.

The application should consist of, at a minimum:

1. Executive Summary (one page, may be single spaced, and is not included in the Proposal Narrative page count) which briefly summarizes:
   —Amount of federal assistance requested
   —Key assessment, planning, and implementation activities proposed
2. Proposal Narrative (no more than 10 pages, double spaced)
   —Introduction
   —Statement of Need
   —Goals and Objectives
   —Workplan, timeline and staffing
   —Collaboration
   —Evaluation
3. Budget Narrative
4. Appendices, (not included in the Proposal Narrative page count) which may include letters of commitment from key collaborators.

Applicants should review and consider CDC's Assessment and Planning Tools in their VAW planning efforts. Please refer to *www.cdc.gov/ncipc* to review and obtain additional information on these tools.

F. Submission and Deadline

Application: Submit the original and 2 copies of PHS 5161–1 (OMB Number 0920–0428).

Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

Application forms must be submitted in the following order:

Cover letter

Table of Contents

Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narratives

On or before 5:00 p.m. Eastern Time July 12, 2002, submit the application to the: Technical Information Management Section, 2920 Brandywine Road, Suite 300, Atlanta, Georgia 30341.

Deadline: The applications shall be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

Part 1: Planning

a. Workplan, Timeline and Staffing (35 points)

A detailed description of how staffing and planning resources will be allocated and used to accomplish each objective and the overall program goals. The extent to which a clear workplan and time line is included and provides for appropriate methods of assessment, planning, and implementation. This includes the appropriate identification and use of data for planning.

The extent to which the proposed workplan and timeline are realistic, given available resources.

The extent to which the proposal identifies issues and implementation strategies that address specific challenges and barriers to VAW prevention efforts for priority populations such as, but not limited to, racial and ethnic or immigrant populations, gay and lesbian, elderly, rural or other ''hard to reach'' populations and women with disabilities.

b. Collaboration (25 points)

The extent to which the agencies/institutions/organizations who are named as members of the state advisory committee represent broad areas of expertise. Minimally this committee should include the state/territory/tribal agency's injury prevention department; the state or territory rape prevention and education coordinator; a representative from the state sexual assault coalition; a representative from the state domestic violence coalition; a representative from the state justice agency; and a representative from the state education department. A description of the roles and responsibilities of the member organizations, methods for making decisions, etc. should be included. The extent to which the letters of support from these organizations are included in an Appendix and demonstrate that the applicant and the other collaborating organizations have established a ''working partnership'' (*e.g.,* all will have active roles in the project).

c. Evaluation (15 points)

The extent to which the applicant has provided Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The extent to which these measures are objective/quantitative and measure the intended outcome.

The extent to which there is a feasible plan to disseminate the results of the assessment, planning and implementation activities to key stakeholders and to local communities.

Goals and Objectives (10 points)

The extent to which the project goals are relevant and the process or outcome objectives related to the assessment, planning and implementation activities are specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

d. Statement of Need (15 points)

The extent to which the applicant describes the state health agency's current level of activities related to VAW issues.

The extent to which the applicant demonstrates the agency's commitment to planning and implementing effective and culturally competent initiatives addressing VAW, and its capacity to foster effective community collaborations to respond to emerging policy and program issues.

e. Goals and Objectives (10 points)

The extent to which the project goals are relevant and the process or outcome objectives related to the assessment, planning and implementation activities are specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

f. Budget (reviewed, not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with state objectives and proposed activities described in this announcement.

g. Measures of Effectiveness (reviewed, but not scored)

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the following NCIPC performance goals: (1) Reduce VAW and (2) enhance the capacity of states to implement effective rape prevention and education programs.

Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Part 2: Implementation

a. Workplan, Timeline and Staffing (35 points)

A detailed description of how staffing and planning resources will be allocated and used to accomplish each objective and the overall program goals.

The extent to which a clear workplan and timeline is included and provides for appropriate methods of assessment, planning, and implementation. Applicants should demonstrate how data is used in directing the activities to be implemented.

The extent to which the proposed workplan and timeline are realistic, given available resources. The extent to which the proposal identifies issues and implementation strategies that address specific challenges and barriers to VAW prevention efforts for priority populations such as, but not limited to, racial and ethnic or immigrant populations, gay and lesbian, elderly, rural or other ''hard to reach'' populations and women with disabilities.

b. Collaboration (25 points)

The extent to which the agencies, institutions and/or organizations who are named as members of the state advisory committee represent broad areas of expertise. Minimally this committee should include the state/territory/tribal agency's injury

prevention department; the state or territory rape prevention and education coordinator; a representative from the state sexual assault coalition; a representative from the state domestic violence coalition; a representative from the state justice agency; and a representative from the state education department. A description of the roles and responsibilities of the member organizations, methods for making decisions, etc. should be included. The extent to which the letters of support from these organizations are included in an Appendix and demonstrate that the applicant and the other collaborating organizations have established a ''working partnership'' (*e.g.,* all will have active roles in the project).

c. Statement of Need (15 points)

The extent to which the applicant describes the state health agency's current level of activities related to VAW issues. The extent to which the applicant demonstrates the agency's commitment to planning and implementing effective and culturally competent initiatives addressing VAW, and its capacity to foster effective community collaborations to respond to emerging policy and program issues. Describe the outcome or product of the previous VAW funding received under PA 99136 and 00119 and the extent to which that process informs this proposal.

d. Evaluation (15 points)

The extent to which the applicant has provided Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The extent to which these measures are objective/quantitative and measure the intended outcome.

The extent to which there is a feasible plan to disseminate the results of the assessment, planning and implementation activities to key stakeholders and to local communities.

e. Goals and Objectives (10 points)

The extent to which the project goals are relevant and the process or outcome objectives related to the assessment, planning and implementation activities are specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

f. Budget (reviewed, not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with state objectives and proposed activities described in this announcement.

g. Measures of Effectiveness (reviewed, but not scored)

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the following NCIPC performance goals: (1) Reduce VAW and (2) enhance the capacity of states to implement effective rape prevention and education programs.

Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of—

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit:

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section I.1]of the Public Health Service Act, [42 U.S.C. section [I.2]], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

In addition to the pre-application conference calls, CDC will provide a guidance document which addresses the program requirements, application content, and evaluation criteria. This guidance document is available as an attachment and also online at *www.cdc.gov/ncipc.*

If you have questions after the technical assistance conference call or with regards to the contents of all the documents, business management assistance may be obtained from: Angie Nation, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone number: (770) 488–2719, E-mail address: *aen4@cdc.gov.*

For program technical assistance, contact: Jocelyn Wheaton, MPH, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K60, Atlanta, GA 30341–3724, Telephone number: (770) 488–1125, E-mail address: *jwheaton@cdc.gov.*

Dated: May 24, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13637 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and Date: 8 a.m.–4 p.m., July 18, 2002.

Place: Centers for Disease Control and Prevention, Chamblee Campus; 4770 Buford Highway, Building 102, Rooms 2201 & 2202, Chamblee, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will anticipate, identify, and propose solutions to strategic and broad issues facing CDC.

Matters to be Discussed: Agenda items will include updates from Dr. David W. Fleming, M.D., Acting Director, CDC regarding CDC priorities with discussions of program activities including updates on CDC scientific and programmatic activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–23, Atlanta, Georgia 30333. Telephone 404/639–7060.

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: May 24, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13642 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors Meeting, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.—3 p.m., June 27, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone 202/628–2100, fax 202/879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational Safety and Health on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Acting Director of NIOSH; Report from the BSC Beryllium Subcommittee; Approaches to Occupational Health and Safety for Under-Served Populations; Update on Extramural Grant Programs; Dermal Exposure Research.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202)205–7856, fax (202)260–4464.

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: May 24, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13633 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: National Institute for Occupational Safety and Health (NIOSH), Standards Development Efforts for Full Facepiece Air-Purifying Respirators (APR) Used to Protect Emergency Response Workers Against Chemical, Biological, Radiological and Nuclear (CBRN) Agents.

Times and Dates: 1 p.m.–5 p.m., June 18, 2002. 9 a.m.–5 p.m., June 19, 2002.

Place: Sheraton Station Square, Pittsburgh, Pennsylvania.

Status: The meeting will be open to the public, limited only by the space available. The meeting room accommodates approximately 200 people.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8303, fax (513) 533–8285, or e-mailed to *NIOCINDOCKET@CDC.GOV*. All requests to present should contain the name, address, and telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. After reviewing the requests for presentations, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

The US. Army Soldier and Biological Chemical Command (SBCCOM) and National Institute for Standards and Technology (NIST) plan to hold a related meeting on June 20, 2002 at the same location to discuss the development of chemical and biological personal protection equipment standards and guidelines (other than respirators). They are the lead agencies associated with the development of standards for personal protective equipment, other than respirators, against CBRN agents. For information concerning this June 20, 2002 meeting, please contact: Ms. Elaine Stewart-Craig, Edgewood Chemical Biological Center, SBCCOM, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424, ATTN: AMSSB–REN–HD–T, telephone 410–436–2102, fax 410–436–2998, and/or e-mail *Elaine.stewartcraig@sbccom.apgea.army.mil.*

Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–8303, fax 513/533–8285. Comments may also be submitted by e-mail to: *NIOCINDOCKET@CDC.GOV*. E-mail attachments should be formatted as WordPerfect 6/7/8/9, or Microsoft Word. Comments should be submitted to NIOSH no later than July 15, 2002, and should reference docket number, NIOSH–002, in the subject heading.

Purpose: The purpose of the meeting is to present concepts for proposed approval standards and testing precesses for full facepiece Air-Purifying Respirators (APR) suitable for use by first responders against CBRN

agents; concepts and priorities for the development and implementation of standards for other classes of respirators; and research work to identify stimulant materials for use as CBRN test surrogates for respirator research and development efforts. NIOSH and its standards development partners, U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the development of the concepts and priorities being considered for the development of standards for the various classes of respirators. Participants will be given an opportunity to ask questions and to present individual comments that they may wish to have considered. Interested participants may obtain a copy of the APR CBRN standard concept paper from the NIOSH contact identified below, or from the NIOSH National Personal Protective Technology Laboratory Web site, address: *http://www.cdc.gov/niosh/npptl.*

Recent acts of terrorism have created an urgent awareness of domestic security and preparedness issues. Municipal, states, and federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resources requirements for coping with such events. The federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, National Fire Protection Association and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate and approve respirators.

NIOSH, SBCCOM, and NIST hosted a public meeting April 17 and 18, 2001, and presented their progress in assessing respiratory protection needs of responders to chemical, biological, radiological and nuclear incidents. The methods or models for developing hazard and exposure estimates, and the status in evaluating test methods and performance standards that may be applicable as future chemical biological, radiological, and nuclear respirator standards or guidelines were discussed at that meeting. On December 28, 2001, NIOSH announced standards for the evaluation and approval of Self Contained Breathing Apparatus to protect emergency responders against chemical, biological, radiological, and nuclear agents. NIOSH and SBCCOM are in the process of developing chemical, biological, radiological and nuclear respiratory protection standards and guidelines for full facepiece Air-Purifying Respirators (APR) as well as other classes of respirators. The June 18 and 19, 2002 public meeting will provide an update on those activities.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Szalajda, NIOSH, PO Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone 412/386–6627, fax 412/386–6747 and/or e-mail: *respcert@cdc.gov.*

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: May 24, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13639 Filed 5–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1209–N]

Medicare Program; Notice of Modification of Beneficiary Assessment Requirements for Skilled Nursing Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: As part of the Secretary's Regulatory Reform Initiative, this notice offers to skilled nursing facilities (SNFs) the option of using a modified, shorter version of the minimum data set (MDS) to satisfy the Medicare SNF payment and quality requirements. The Medicare SNF prospective payment system rates are based on the assignment of beneficiaries to case-mix classification groups. Beneficiaries are assigned to groups based on the information collected by the SNF staff and recorded on the MDS. The quality measures are also derived from the information recorded on the MDS and all of those items are included in this modified, shorter version. This shorter version of the MDS will reduce the burden on SNFs by approximately one-half, which may result in saving a significant amount of time that could be made available to staff for the provision of beneficiary care. We are offering to SNF providers the option of using the shorter version of the MDS to meet the requirements to receive payment for Part A SNF stays.

DATES: This notice is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dana Burley (410) 786–4547.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) has made regulatory reform a priority. To further this goal, the Secretary established an Advisory Committee on Regulatory Reform to provide advice on potential administrative and regulatory changes that could reduce burdens and costs while maintaining or enhancing effectiveness and access to health care. In order to fulfill its mandate, among other activities, the committee has held public hearings, heard testimony from providers and beneficiary groups, and visited a skilled nursing facility (SNF) to examine the regulatory burdens imposed on SNFs.

During the course of its deliberations, the Advisory Committee examined the minimum data set (MDS) and identified almost two dozen MDS areas for review. While affirming the critical contribution of the MDS to quality, the committee has identified some MDS issues that relate to the size of the instrument and the need to focus data collection on payment, outcome, and survey purposes. The modifications announced in this notice address one of the issues identified in the course of the activities undertaken by the Advisory Committee.

In this notice, we are announcing the option of using a shorter MDS developed for use by providers to assess Medicare beneficiaries for purposes of

the SNF prospective payment system (PPS) assessment requirements during their Part A covered SNF stays. This is one step in our ongoing effort to streamline our regulatory requirements for providers who participate in the Medicare program and for our beneficiaries.

The current Medicare assessment requirements are based on section 4432(a) of the Balanced Budget Act of 1997 (BBA), that amended section 1888(e) of the Social Security Act (the Act), which mandated implementation of a Medicare skilled nursing facility (SNF) prospective payment system. Section 1888(e)(4) of the Act provides the basis for establishing the per diem Federal payment rates applied under the PPS and sets forth the formula for the rates, including the data on which they are based. In addition, this section of the Act requires annual adjustments to the PPS rates based on geographic variation and SNF case-mix and prescribes the methodology for updating the rates in future years.

The PPS case-mix adjustments are derived from the clinical information collected by providers about Medicare Part A covered beneficiaries during their SNF stays, using the minimum data set (MDS). As a result of a mandate contained in the nursing home reform legislation in the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), a uniform MDS was required as a part of the comprehensive resident assessment for all certified long-term care facilities. The provisions of OBRA '87 require that certified long-term care facilities collect information concerning all residents to support care planning activities. Comprehensive assessments, using the MDS, are required at admission (no later than 14 days following admission), annually, and upon a significant change in a resident's condition. In addition, quarterly reviews of each resident are required. A shorter version of the MDS has been developed for these quarterly assessments.

With implementation of the SNF PPS, providers were required to perform MDS assessments of all beneficiaries in Medicare Part A covered stays on days 5, 14, 30, 60, and 90 of their Medicare covered stays. The assessments required for the SNF PPS are in addition to those required by the OBRA '87, although there is often overlap in the timing of the required assessments so that one assessment may be used to satisfy both the OBRA '87 and SNF PPS requirements.

At the time of implementation of the SNF PPS, we were aware that some refinements to the payment system might be required as we learned more during the national operational period. However, because of what we learned from the demonstration, and in order to have full national level data on Medicare beneficiaries (including their resource use requirements), we did not believe that a shorter version of the MDS was appropriate at that time.

The SNF PPS has now been in place for more than 2 full years and we believe that it is now feasible to offer providers the option of using a shorter version of the MDS. There is no regulatory impediment to our making available, as an option, a shorter version of the MDS for purposes of Medicare payment and quality monitoring. We find that the information that we have collected from the full MDS since implementation of the Medicare SNF PPS, which is stored in the National MDS Repository, in addition to the continued collection of information from both the full MDS and the optional shorter version, are adequate to support payment, program integrity, quality monitoring, and provider and beneficiary educational activities.

The OBRA '87 requirements remain unchanged. Only those MDS assessments that are performed solely for the purpose of satisfying the Medicare SNF PPS assessment requirements are affected by this decision to offer a shorter version of the MDS. For those Medicare SNF PPS assessments, SNFs may, at their option, use a shorter version of the MDS, the Medicare PPS Assessment Form, Version 2002 (MPAF). This shorter version of the MDS will be available for provider use beginning July 1, 2002 and is currently available on the SNF PPS web site at *www.hcfa.gov/medicare/SNFPPS.htm.* The MPAF contains all of the MDS items needed to calculate the beneficiary's RUG–III classification and Quality Indicators.

The nursing home reform provisions of the OBRA '87 established the MDS as key to the process for ensuring the quality of care for nursing home residents. All current assessments address quality of care, although the OBRA '87-required 14-day and 90-day assessments are intended primarily for quality evaluation and care planning support. The shorter version of the MDS offered in this notice in no way undermines the important quality assurance and care planning support functions of the process. We remain committed to the ongoing collection of information, as specified in the OBRA '87, as a cornerstone of the provision of high quality care for all long term care facility residents.

In addition to the quality provisions of OBRA '87, the Secretary has initiated a Nursing Home Quality Initiative, designed to assess the quality of care provided by SNFs. As an integral part of this initiative, we are making information about local nursing homes available to members of the communities in which they operate. The first step in this process, to pilot test quality measures and publish those scores, is underway in 6 States (Florida, Maryland, Ohio, Rhode Island, Washington, and Colorado). Quality measurement and assuring that high quality care is provided to all residents in certified nursing facilities remains a priority and will be the focus of ongoing research activity. Therefore, the MPAF was designed so that it includes all of the data elements required to derive all of the current quality measures.

Due to our strong interest in quality assurance and our ongoing research efforts related to outcome measures for quality, as well as MDS accuracy, new payment and classification systems and assessment instruments across post-acute care settings, it is certain that, over time, the scope and content of items included on all MDS assessment instruments will change. For example, we are planning to modify the full MDS in order to simplify some items and update others, according to clinical practices. This modification will be the MDS 3.0, which we expect to complete in 2004. Similarly, we are engaged in a significant effort to develop tools to help providers educate staff and assure the accuracy of their MDS assessments. This work is being performed through a Program Safeguard contract and includes monitoring of other aspects of nursing facility practices, in addition to the MDS accuracy studies. We will also work on developing systems by which we can monitor MDS assessments on a national level.

II. Development of the MPAF

Development of this new, shorter version of the MDS was based on the RUG–III Quarterly, Optional Version, 1997 Update. This version of the MDS contains almost all of the items needed to calculate the Medicare RUG–III case-mix classification groups and is already part of the State standard MDS systems. However, the RUG–III Quarterly does not include Sections AA8b and T of the MDS that are essential for the PPS, the risk adjustment items necessary for calculating the Quality Indicators, certain items required for the Quality Medical Review function of the Peer Review Organizations (PROs), or items we believed may be useful for refinements to the payment system.

The addition of items to the RUG–III Quarterly from the MDS to satisfy the

requirements of ongoing Medicare payment policy research, PRO tasks, and quality monitoring resulted in an assessment form that is somewhat longer than the RUG–III Quarterly, but still significantly shorter than the full MDS.

III. Optional Use of the MPAF

The MPAF will be available for use July 1, 2002. Providers may choose to use this shorter version of the MDS to satisfy the Medicare SNF PPS requirements for assessments at days 5, 14, 30, 60, and 90 of Medicare Part A covered stays. The requirement for an Other Medicare Required Assessment (OMRA) 8 to 10 days after cessation of all rehabilitation therapy may also be satisfied by using the MPAF.

With the implementation of the SNF PPS, compliance with the OBRA '87 requirement for an Initial Admission Assessment by the 14th day and the Medicare SNF PPS requirements for an assessment at days 5 and 14 has been met routinely by performing one assessment to meet both requirements. This has been a fairly seamless combination of requirements, since the SNF PPS requirements, before the implementation of this optional MPAF, called for a full MDS assessment and the Initial Admission Assessment also required the full MDS, as well as additional care planning activities. It will still be possible to use one assessment to comply with both the OBRA '87 clinical rules and the Medicare SNF PPS assessment requirements. The provider will be required to meet the more rigorous standard (comprehensive assessment to comply with the requirement for an initial admission assessment) and may use that assessment to comply with the lesser Medicare requirement.

IV. Implementation

The items on the MPAF are the same as they appear on the full MDS. We have not altered wording, instructions for completion, or numbering in development of the MPAF. For example, MDS item I1m (hip fracture) on the full MDS is also item I1m (hip fracture) on the MPAF, even though on the MPAF this item is followed by I1r (aphasia), rather than I1n (missing limb), which has been removed from this shorter version of the assessment form. Since our intent in providing this revised, shortened version of the MDS is to alleviate burden on providers, we have maintained the ordering and numbering system of the MDS items. We believe that this will minimize confusion for clinical staff who are used to the item numbering as it exists on the full version of the MDS and support ease of use of the revised version.

With the implementation of the MPAF, the burden on SNF providers will also be lessened. Once the MPAF is implemented, we will no longer require a Medicare SNF PPS assessment to be performed using the full MDS. Rather, only the new MPAF will be required. The MPAF will be essentially a RUG–III 1997 Update Quarterly assessment form with items added to allow evaluation of SNF quality of care.

Beginning July 1, 2002, facilities will have the option to (1) submit Medicare SNF PPS records using only the MPAF items, or (2) continue to submit Medicare SNF PPS records using the full MDS. The standard MDS system used by the States will accept either type of record as valid. The standard system will validate and store only the set of MPAF items. Additional items will be ignored by the system. Some providers may wish to continue to send a full MDS assessment to avoid revising MDS data entry software. If that is the case, no submission errors or warnings will result.

When a Medicare SNF PPS assessment would be coupled with a required clinical assessment (for example, a 14-day Medicare SNF PPS assessment combined with an initial admission assessment) we will require the MDS record to include all of the MPAF items plus any additional items required by the clinical assessment, in order to satisfy both sets of assessment requirements.

If any Medicare SNF PPS assessment is combined with a comprehensive assessment (initial assessment, annual assessment, significant change in status assessment, or significant correction of prior full MDS assessment), we will require the record submitted to include all comprehensive assessment items.

When a Medicare SNF PPS assessment is coupled with a quarterly assessment or a significant correction of a prior quarterly assessment, we will require the record submitted to include all MPAF items and any additional items required on the State's quarterly assessment. In States using our standard minimum quarterly or standard RUG–III quarterly assessment, the MPAF items will include all items on the quarterly assessments, and only the MPAF will be required. In States that require additional quarterly items, not included on the MPAF, those additional items will be required to be included on a combined Medicare SNF PPS and quarterly assessment record. For example, in the 7 States that require a full MDS assessment as the quarterly assessment, a record combining a Medicare SNF PPS assessment and a quarterly assessment will have to include all of the full MDS items.

V. Collection of Information Requirements

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper functions of the agency's functions; (2) the accuracy of our estimate of the information collection burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the PRA, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. We cannot reasonable comply with the normal clearance procedures because the MPAF will be effective on July 1, 2002.

We are requesting OMB review and approval of this collection within 15 days of the date of this publication, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 14 days of this publication. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements.

Summary: SNFs are required to submit the resident assessment data described at 42 CFR 483.20, in the manner necessary to administer the payment rate methodology described in § 413.337. Pursuant to sections 4204(b)

and 4214(d) of OBRA '87, the current requirements related to the submission and retention of resident assessment data are not subject to the PRA. However, the requirement to maintain performance of patient assessment data for days 5, 30, and 60 following admission, necessary to administer the payment rate methodology described in § 413.337, is subject to the PRA, and is approved by OMB under approval number 0938–0739, with a current expiration date of April 30, 2003.

Since we are now making the collection and submission of certain MDS items optional, as referenced in this notice, we are soliciting comments on the optional data elements and burden reduction associated with the revised reporting requirements.

We have submitted a copy of this notice to OMB for its review of the information collection requirements.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access our web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or E-mail your request, including your address, telephone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office at (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 14 days of the publication of this notice:

Centers for Medicare & Medicaid Services, Office of Information Services, Standards and Security Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Room N2–14–26, Baltimore, MD 21244–1850, Fax: (410) 786–0262 Attn: John Burke, CMS–1209–N, and,

Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, CMS Desk Officer, CMS–1209–N.

VI. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866, the Unfunded Mandates Reform Act (UMRA, Pub. L. 104–4), the Regulatory Flexibility Act (RFA, Pub. L. 96–354), and the Federalism Executive Order 131232.

Executive Order 12866 directs agencies to assess 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is not significant as defined in Title 5, United States Code, section 804(2).

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this notice falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999) establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this notice will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $10 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals are also not included in the definition of a small entity. The provisions of this notice, to make available a shorter version of the MDS to meet Medicare payment requirements, creates no additional regulatory burden on small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This notice only applies to those few small rural hospitals that have distinct-part skilled nursing units. For those few providers, the option provided by this notice decreases the regulatory burden and requires no action by the provider.

We do not believe that there will be any negative effect on either the quality of care delivered, or on our ability to monitor the quality of that care, as a result of decreasing the amount of clinical information that will be collected for Medicare beneficiaries during their SNF stays. The MPAF includes all of the assessment items required for the resident assessment instrument by the OBRA '87, as well as all of the items to support current quality monitoring. Further, the Secretary's Advisory Committee on Regulatory Reform strongly favored a reduction of the amount of data collection required from nursing facilities, an indication of the expected reception by the public of this new version of the MDS.

Facilities may be concerned about making changes to their computer systems in order to be able to enter and transmit the MPAF electronically. We note that there is no requirement for facilities to integrate this version of the MDS into their systems. The facility has complete discretion regarding when, and if, it chooses to begin use of this assessment form. The RAVEN grouper and MDS transmission software that is available at no cost from our web site at *www.hcfa.gov/medicare/mds20/mdssoftw.htm* will support the use of the MPAF. Also, the State systems will accept the MPAF beginning July 1, 2002.

We estimate that the MPAF will require approximately half as much time to complete as the full MDS. Completion of the MPAF will require approximately 45 minutes, compared to approximately 90 minutes required to complete the MDS currently in use. Depending on the SNF's level of Medicare participation, use of the MPAF may result in saving a significant amount of time that could be made available to staff for the provision of beneficiary care.

VII. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of

the finding and its reasons in the notice issued.

We find that it is unnecessary and contrary to the public interest to undertake notice and comment rulemaking because this notice merely provides SNFs with the option to use a shorter version of the MDS to satisfy the Medicare assessment requirements, thus, lessening the burden on the SNF providers. There is no change to the current practices of SNF providers in completing the MDS resident assessment instrument. Therefore, for good cause, we waive prior notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 24, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–13613 Filed 5–24–02; 4:53 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to Montana Child Care Resource and Referral Network

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award Announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to Montana Child Care Resource and Referral Network to develop a revolving fund program that will offer low-interest loans to child care businesses.

As a Congressional set-aside, this 17-month project is being funded noncompetitively. This project has the potential for creating innovative collaborative mechanisms at the local level for building a quality child care system. The cost of this 17-month project is $200,000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone: 202–205–4829.

Dated: May 20, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 02–13628 Filed 5–30–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Special Volunteer and Guest Researcher Assignment

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 31, 2002, (Volume 67, Number 21) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Special Volunteer and Guest Researcher Assignment.

Type of Information Collection Request: Extension of OMB No. 0925–0177; 07/31/02.

Need and Use of Information Collection: Form NIH–590 records, names, address, employer, education, and other information on prospective Special volunteers and Guest Researchers, and is used by the responsible NIH approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments.

Frequency of Response: On occasion.

Affected Public: Individuals or households.

Type of Respondents: Guest Researcher and Special Volunteer candidates.

Estimated Number of Respondents: 1,630.

Estimated Number of Responses Per Respondent: 1.

Average Burden Hours Per Response: .1.

Estimated Total Annual Burden Hours Requested: 163. There are no Capitol Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Guest Researcher	400	1	.1	40
Special Volunteer	1230	1	.1	123
TOTAL	1630	1	.1	163

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To: Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Edie Bishop, HR Consultant, OD, NIH, Office of Human Resource Management, Senior and Scientific Employment Division, Building 31, Room B3C07, 31 Center Drive MSC 2203, Bethesda, MD 20892–2272.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: February 27, 2002.

Stephen C. Benowitz,

Director, Office of Human Resource Management.

[FR Doc. 02–13713 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Enhanced Distribution of Therapeutic Agents After Local Delivery

Krys Bankiewicz et al. (NINDS)

U.S.P.A. Nos. 60/250,286 filed 30 Nov 2000 and 60/286,308 filed 25 Apr 2001

Licensing Contact: Norbert Pontzer; 301/496–7736 ext. 284; e-mail: *np59n@nih.gov*

Many experimental therapies will rely on the local parenchymal delivery of macromolecules or nucleic acids for their success. However, the volume of distribution of many of these potential therapeutic agents is restricted by their interactions with the extracellular matrix and cellular receptors. Heparin-sulfate proteoglycans are a cell surface component which bind to many different types of molecules such as growth factors, cytokines and chemokines and viruses such as cytomegalovirus, herpes simplex virus and HIV.

These inventions provide a method of dramatically increasing the volume of distribution and effectiveness of certain therapeutic agents after local delivery by the use of facilitating agents as described in Neuroreport. 2001 Jul 3;12(9):1961–4 entitled ''Convection-enhanced delivery of AAV–2 combined with heparin increases TK gene transfer in the rat brain'' and in Exp Neurol. 2001 Mar;168(1):155–61 entitled ''Heparin coinfusion during convection-enhanced delivery (CED) increases the distribution of the glial-derived neurotrophic factor (GDNF) ligand family in rat striatum and enhances the pharmacological activity of neurturin.'' These methods are especially useful when used in conjunction with technology described and claimed in U.S. Patent 5,720,720 entitled ''Convection-enhanced drug delivery.'' Licenses for methods to enhance the distribution of all claimed therapeutics except adeno-associated viral vectors are available.

Sol Fusin: Use of GP64–6HIS to Catalyze Membrane Fusion

D. H. Kingsley and J. J. Zimmerberg (NICHD)

DHHS Reference Nos. E–113–99/0 filed 18 Feb 1999 and E–113–99/1 filed 15 Nov 2001

Licensing Contact: Pradeep Ghosh; 301/496–7736 ext. 211; e-mail *ghoshp@od.nih.gov*

An efficient drug delivery system is a necessity for a wide range of therapeutic interventions. This technology pertains to a process related to the solubilizing of insoluble membrane proteins, thus generating soluble and functional version (sol-proteins) of previously insoluble proteins. Specifically, the invention relates to the addition of histidine amino acids to the cytoplasmic domains of membrane and viral envelope proteins for the purpose of solubilizing, purifying and/or reconstituting functional viral envelope proteins in lipid-containing vesicles. The modified protein mediates fusion of the resulting vesicular membrane with other lipid membranes, thus creating an efficient delivery system. The proteins in this form have been referred to as ''sol-fusin'' and the resultant sol-fusin/liposome complex is potentially able to catalyze delivery of therapeutic, genetic, or antigenic compounds both in vivo and in vitro. Thus, pharmaceutical and vaccine manufacturers may use these proteoliposomes as tools to deliver active therapeutic, genetic or antigenic agents without destruction by lysosomes. In addition to being useful as a delivery tool, the sol-fusin/ liposomes can be used to mimic viral infections. The triggering of sol-fusin is low pH-dependent, and thus may perhaps facilitate oral ingestion and gastrointestinal absorption of the bioactive agents because of their direct membrane fusion mediating activity.

Dated: May 23, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–13731 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Advisory Committee to the Director, NIH, June 6, 2002, 8:30 AM to June 6, 2002, 4:30 PM, 31 Center Drive, Building 31, Room 4C32 (NIAMS Conference Room), Bethesda, MD, 20892 which was published in the **Federal Register** on May 22, 2002, 67 FR 97.

The Advisory Committee to the Director, NIH, will be meeting in Conference 10, Building 31C, National Institutes of Health, Bethesda, Maryland. The meeting date and time remain the same. The meeting is open to the public.

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13717 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NHLBI, June 6, 2002, 8 a.m. to June 7, 2002, 5 p.m., National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7S235, Bethesda, MD 20892 which was published in the **Federal Register** on April 18, 2002, FR Vol. 67 Pg. 19197.

The Board of Scientific Counselors, NHLBI meeting date was changed from June 6–7, 2002, to June 6, 2002. Time and location remain the same. The meeting is closed to the public.

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13716 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, CIPRA R03 Review.

Date: June 21, 2002.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yen Li, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616, 301–496–2550. *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13714 Filed 5–30–02; 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 grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Effects of Hypoglycemia on Neuronal and Glial Cell Function.

Date: June 28, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Embassy Row, 2100 Massachusetts Ave., Washington, DC 20008.

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, 301–496–0600.

(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: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13715 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Child Health and Human Development Initial Review Group, Population Research Subcommittee.

Date: July 10–11, 2002.

Time: 7:30 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jon M. Ranhand, PHD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., Rm. 5E01, MSC 7510, Bethesda, MD 20892. (301) 435–6884,

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13718 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel—Cognition in Schizophrenia.

Date: July 1, 2002.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9606, Bethesda, MD 20892–9606, (301) 443–1225, *rweise@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13719 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 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 associate with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Services RISP.

Date: June 17, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9608. 301/443–7216. *hhaigler@mail.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: National Institute of Mental Health Special Emphasis Panel, Minority Training in Genetics, Neuroendocrinology, and Psychopathology.

Date: June 19, 2002.

Time: 11 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: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301/443–1513. *psherida@mail.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: National Institute of Mental Health Special Emphasis Panel, ''Binge eating Intervention''.

Date: June 20, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470. *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Minority Clinical Training in Mental Health.

Date: July 1, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ''Intermittent Explosive Disorder''.

Date: July 16, 2002.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470. *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ''Depression and Treatment Intervention''.

Date: July 19, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606. 301–443–6470. *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13720 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, CIPRA.

Date: June 20, 2002.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yen Li, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7616. 301 496–2550. *yli@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13721 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(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: Acquired Immunodeficiency Syndrome Research Review Committee, AIDS Research Review Committee.

Date: June 26–27, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–496–2550. *rb169n@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13722 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Inhalant Abuse: Supporting Broad-Based Research Approaches.

Date: June 20–21, 2002.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: June 26, 2002.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.

Date: July 1–2, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13723 Filed 5–30–02; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, May 30, 2002, 8:00 a.m. to May 30, 2002, 10:00 a.m., National Institutes of Health, Building 31, A Wing, Conference Room 8A28, 31 Center Drive, Bethesda, MD, 20892, which was published in the **Federal Register** on May 2, 2002, 67 FR 02–10911.

The location of the Clinical Trials Subcommittee meeting has been changed to Building 31, Conference Room 10, The meeting is partially Closed to the public.

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13724 Filed 5–30–02; 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; Cancellation of Meeting

Notice is hereby given of the cancellation of the Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee meeting scheduled on May 30, 2002, 8:00 AM to 10:00 AM, National Institutes of Health, Building 31, C Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, MD, 20892 which was published in the **Federal Register** on May 2, 2002, 67 FR 02–10911.

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13725 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel, U.S. Based Collaboration in Emerging Viral abd Prion Diseases (Prion).

Date: June 21, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mark S. Hanson, PHD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6770B Rockledge Drive, MSC–7616, Bethesda, MD 20892. 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13726 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Comprehensive International Program for Research on AIDS (CIPRA).

Date: June 18, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892, 301–496–7966, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13727 Filed 5–30–02; 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, Cortical Control of Neural Prostheses.

Date: June 20, 2002.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6001 Executive Blvd, Room 3203, Rockville, MD 20852, (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) 496–5388.

(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: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13729 Filed 5–30–02; 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 Reproductive Endocrinology Study Section, June 12, 2002, 8:00 AM to June 13, 2002, 3:00 PM, Bethesda Marriott Suites, 6711

Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on May 17, 2002, 67 FR 35126–35128.

The meeting has been changed to June 10–11, 2002. The time and location remain the same. The meeting is closed to the public.

Dated: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–13728 Filed 5–30–02; 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 associate with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology integrated Review Group, Experimental Virology Study Section.

Date: June 11–12, 2002.

Time: 8:30 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1050, *freundr@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, ZRG1 General Medicine B(17).

Date: June 12, 2002.

Time: 12 pm to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 1.

Date: June 13–14, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Su. PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: June 13–14, 2002.

Time: 8:30 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship (F02A) Study Section.

Date: June 18, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Eskay, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 4.

Date: June 19–20, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcelo, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Dan Kenshalo, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 19, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin, Avenue, Bethesda, MD 29814.

Contact Person: Richard Marcus, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245.

Name of Committee: Infectious Diseases and Microbiology Integrated Review, Group, Bacteriology and Mycology Subcommittee 2.

Date: June 19–20, 2002.

Time: 8:30 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Timothy J Henry, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, 301–435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–F (01).

Date: June 19, 2002.

Time: 8:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Weston Grand Hotel, 2350 M Street, NW, Washington, DC 20037–1417.

Contact Person: Calbert A. Laing, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, laingc@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–X (21 Imaging.

Date: June 19, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 Biochemistry (01).

Date: June 19, 2002.

Time: 5 pm to 8 pm.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–3 (01).

Date: June 19–21, 2002.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Swissotel Washington, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278, simpsod@mail.nih.gov

Name of Committee: Integrative, Functional and Cognitive Neuroscinece Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 1.

Date: June 19–20, 2002.

Time: 8:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Social Sciences, Nursing, Epidemilogy and Methods Integrated Review Group, Social Sciences, Nursing, Edipemiology and Methods 2.

Date: June 20–21, 2002.

Time: 8 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Yvette Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retina Study Section, ZRG1 VISC (01) Q.

Date: June 20–21, 2002.

Time: 8 am to 4 pm

Agenda: To review and evaluate grant applications.

Place: Crowe Plaza Hotel, 14th & K Streets, NW., Washington, DC 20005.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910. *chaitinm@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1—Surgery, Radiology and Bioengineering (08)—DK RFA.

Date: June 20, 2002.

Time: 8 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179.*bradleye@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RPHB–4 (01).

Date: June 20–21, 2002.

Time: 8:30 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

Contact Person: Michael Micklin, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258.*micklinm@csr.nih.gov*

Name of Committee: Social Sciencies, Nursing, Epidemiology and Methods Integrated Review Group, Nursing Research Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BECM (01).

Date: June 20–21, 2002.

Time: 8:30 am to 6 pm

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217.*byrnesn@csr.nih.gov*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr,nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Biochemistry Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group, Immunological Sciences Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

Name of Committee: Immunological Sciences Integrated Review Group 5, Experimental Immunology Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 11 pm.

Agenda: To review and evaluate grant applications.

Place: Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 30892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 3.

Date: June 20–21, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Avenue NW., Washington, DC 20036.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: June 20–21, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *sayrem@csr.nih.gov*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 20–21, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036–3305.

Contact Person: Rona L. Hirschberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Biophysical Chemistry Study Section.

Date: June 20–21, 2002.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Arnold Revzin, PhD, 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, ZRG1 SNEM–1 (01)

Date: June 20–21, 2002.

Time: 9 am to 3 pm.

*Agenda:*To review and evaluate grant applications.

Place: Madison Hotel, Fifteenth & M Street, NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EDD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, (301) 435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Integrative, Functional and Cognitive Neuroscience 8.

Date: June 20–21, 2002.

Time: 9 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Holidiay Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB (03).

Date: June 20, 2002.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–U (02).

Date: June 20–22, 2002.

Time: 6 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025, addisonr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SNEM–5 (01).

Date: June 21, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Madison Hotel, Fifteenth & M Streets NW., Washington, DC 20005.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0695.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–7 (01).

Date: June 21, 2002.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, Bethesda, MD 20892, (301) 435–1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PC (03)—Biotin-Dependent Enzymes.

Date: June 21, 2002.

Time: 11:30 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB (02)—Novel RNA promoting heart development.

Date: June 21, 2002.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBBP–6 (02).

Date: June 21, 2002.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

(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: May 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Commitee Policy.

[FR Doc. 02–13730 Filed 5–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Modification/Clarification of Eligibility for the SAMHSA/HRSA Collaboration To Link Health Care for the Homeless Programs and Community Mental Health Agencies Grant Program

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of modification/clarification of eligibility the SAMHSA/HRSA Collaboration to Link Health Care for the Homeless Programs and Community Mental Health Agencies.

SUMMARY: This notice is to inform the public of a correction to the SAMHSA/CMHS grant announcement No. SM02–013, SAMHSA/HRSA Collaboration to Link Health Care for the Homeless Programs and Community Mental Health Agencies (Short Title: HCH/CMHA Collaboration Project). SAMHSA has made a correction to the eligibility requirement to include public community mental health facilities that are licensed, accredited, certified, or chartered by appropriate certification or credentialing bodies to provide mental health services. Check the **Federal Register** dated May 3, 2002, and/or the SAMHSA web site for notice of the grant announcement at *http://www.samhsa.gov/.*

The HCH/CMHA Collaboration Project foster collaborations between Health Care for the Homeless programs and community mental health agencies to increase the availability of mental health and primary care services for persons with serious mental illnesses who are homeless. Awards range from $150,000 to $200,000 in total costs.

Program Contact: For questions concerning this program, contact:

Pamela J. Fischer, Ph.D., Homeless Programs Branch, Suite 11C–05, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4569, Fax 301–443–0256, E-mail: *pfischer@samhsa.gov.*

Dated: May 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–13738 Filed 5–30–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Cooperative Agreement for National Community Antidrug Coalition Institute (SP 02–006), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002 (in millions)	Est. number of awards	Protect period (in years)
Cooperative Agreement for National Community Antidrug Coalition Institute.	July 10, 2002	$2.0	1	6

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement to develop and implement the National Community Antidrug Coalition Institute. The goal of the National Community Antidrug Coalition Institute is to develop and build the capacity of community coalitions to successfully reduce substance abuse. Public Law 107–82, section (4) (c) authorizes the Institute to use approaches to address this goal:

(1) Provide education, training, and technical assistance for coalition leaders and community teams, with emphasis on the development of coalitions serving economically disadvantaged areas;

(2) Develop and disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes; and

(3) Bridge the gap between research and practice by translating knowledge from research into practical information.

Eligibility: Any national nonprofit organization that represents, provides technical assistance and training to, and has special expertise and broad, national-level experience in community antidrug coalitions under the Drug-Free Communities Support Program. (See Public Law 107–82, section 4(b), which cites section 1032 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1532) which also may be cited as the Drug-Free Communities Act of 1997.)

Availability of Funds: In FY 2002, approximately $2,000,000 will be available for the total costs (direct and indirect) for one awards. Estimated subsequent annual awards are anticipated to be $2 million in FY 2003; $1 million in FY 2004; $1 million in FY 2005; $750,000 in FY 2006, and $750,000 in FY 2007. Awards may be requested for up to 6 years. Annual continuation of the award depends on the availability of funds and progress achieved.

Period of Support: An award may be requested for a project period of up to 6 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Boris Aponte, Ph.D., CSAP/SAMHSA, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2290, E-Mail: baponte@samhsa.gov.

For questions regarding grants management issues, contact: Steve

Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: shudak@samhsa.gov

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–13739 Filed 5–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–22]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 22, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–13302 Filed 5–30–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969, the U.S. Fish and Wildlife Service (Service) announces the availability of the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision (Final CCP EIS), Churchill and Washoe Counties, Nevada. Five alternatives for management of the Stillwater National Wildlife Refuge Complex, including a no-action alternative, and four alternative boundaries were considered during the planning process.

DATES: A Record of Decision will be signed no sooner than July 1, 2002.

ADDRESSES: The Final CCP EIS is available on the internet via the Fish and Wildlife Service Region 1 Planning Home Page at http://www.r1.fws.gov/planning/plnhome.html. Public reading copies of the Final CCP EIS may be inspected at the following locations: U.S. Fish and Wildlife Service, Division of Planning, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Stillwater NWR Complex, 1000 Auction Road, Fallon, NV 89406; Churchill County Library, 553 South Main Street, Fallon, NV 89406; Carson City Library, 900 North Roop Street, Carson City, NV 89701; Downtown Reno Library, 301 S. Center Street, Reno, NV 89501. Printed copies have been sent to agencies, organizations, officials, and individuals who participated in the scoping process. A planning update

summarizing the CCP EIS and Alternative E has also been mailed to all individuals and organizations on the CCP mailing list (Planning Update #7, July 2001). Individuals wishing to receive a compact disk copy of the Final CCP EIS should immediately contact the Project Leader, Stillwater National Wildlife Refuge Complex, 1000 Auction Road, Fallon, Nevada, 89406, phone (775) 423–5128.

FOR FURTHER INFORMATION CONTACT: Kim Hanson, Project Leader, Stillwater National Wildlife Refuge Complex, at the above address.

SUPPLEMENTARY INFORMATION: The Stillwater National Wildlife Refuge Complex currently includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, which are located in west-central Nevada, about six miles northeast of Fallon, Churchill County, and Anaho Island NWR, located about 30 miles northeast of Reno, Nevada, in Washoe County. Stillwater NWR encompasses about 79,570 acres of Federal land, Stillwater WMA about 65,603 acres, and Fallon NWR about 17,848 acres, for a combined total of 163,021 acres of Federal land. Non-Federal inholdings within the approved boundaries are about 59,708 acres. Anaho Island NWR encompasses the entire island, which has fluctuated in size from 220 to 745 acres in recent history due to the fluctuating water levels of Pyramid Lake. During winter of 2001 it was estimated to be 523 acres.

Anaho Island NWR was established in 1913 by Executive Order 1819 as a '' * * * preserve and breeding ground for native birds.'' Public Law 101–618 (§ 210(b)(2)) more narrowly defined the purpose of Anaho Island NWR, stating that it was to be managed and administered '' * * * for the benefit and protection of colonial-nesting species and other migratory birds.'' The Public Law also recognized that Anaho Island NWR is part of the Pyramid Lake Indian Reservation, but is to be managed and administered by the Service as a component of the National Wildlife Refuge System (Refuge System).

Fallon NWR was established in 1931 by Executive Order 5606 ''as a refuge and breeding ground for birds and other wild animals.'' It is located at the terminus of the Carson River and encompasses the delta wetlands of the river.

Stillwater WMA and Stillwater NWR were established through a 50-year agreement (Tripartite Agreement) signed in 1948 by the Truckee-Carson Irrigation District, Nevada State Board of Fish and Game Commissioners, and the Service. Although the Tripartite Agreement expired on November 26, 1998, the Service continues to cooperatively manage the Stillwater WMA with the U.S. Bureau of Reclamation under most provisions of the Tripartite Agreement. Stillwater WMA, comprised mainly of U.S. Bureau of Reclamation withdrawn public lands, was established in 1948 for the purposes of conserving and managing wildlife and their habitat, and for public hunting. Stillwater NWR was established in 1949 as a wildlife sanctuary, closed to hunting, adjacent to the public hunting area.

In 1990, the approved boundary of Stillwater NWR was expanded, under subsection 206(b)(1) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II of Public Law 101–618), to encompass Stillwater Marsh, most of which was previously in the Stillwater WMA. In addition to the boundary expansion, Public Law 101–618 also outlined four purposes for which the Service must manage Stillwater NWR: (1) Maintaining and restoring natural biological diversity within the refuge; (2) providing for the conservation and management of fish and wildlife and their habitats within the refuge; (3) fulfilling international treaty obligations of the United States with respect to fish and wildlife; and (4) providing opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

Each alternative in the Final CCP EIS consists of two main parts: (1) A boundary revision for Stillwater NWR, and (2) the framework of a comprehensive conservation plan, including refuge goals, objectives, and strategies for achieving the purposes for which each refuge was established and for contributing toward the mission of the Refuge System.

Boundary Revision

Public Law 101–618 authorized the Secretary of the Interior (Secretary), to recommend to Congress, boundary revisions to Stillwater NWR that may be appropriate to carry out the purposes of the refuge and to facilitate the protection and enhancement of Lahontan Valley wetland habitat. The law authorized the Secretary to submit to Congress recommendations to revise the boundaries of Stillwater NWR as may be appropriate to carry out the refuge purposes and to recommend the transfer of any Bureau of Reclamation withdrawn public lands within the existing wildlife use areas in the Lahontan Valley to the Service for addition to the Refuge System. Furthermore it authorized the identification of lands in the Lahontan Valley currently under the jurisdiction of the Service that no longer warrant continued status as units of the Refuge System.

Comprehensive Conservation Plan

A comprehensive conservation plan is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*). The purpose of developing a comprehensive conservation plan for the Stillwater NWR Complex is to provide managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the Refuge System, consistent with sound principles of fish and wildlife conservation and legal mandates. In addition to outlining broad management direction on conserving wildlife and their habitat, the comprehensive conservation plan highlights wildlife-dependent recreation opportunities available to the public, including opportunities for hunting, environmental education and interpretation, and wildlife observation and photography.

Development of the Final CCP EIS

Public involvement on the development of this CCP EIS has been by means of open houses, public meetings, work group meetings, agency and Tribal consultation, planning update mailings, and **Federal Register** notices. Four previous notices were published in the **Federal Register** concerning this CCP EIS (61 FR 65591, Dec. 13, 1996; 63 FR 39884, July 24, 1998; 64 FR 24168, May 5, 1999; 64 FR 36712, July 7, 1999;).

During the Draft CCP EIS comment period that occurred from April 12 to August 12, 2000, the Service received a total of 56 communications (letters, faxes, postcards, email, visits, or telephone calls). All substantive issues raised in the comments to the Draft CCP EIS have been addressed through revisions to pertinent sections the Final CCP EIS text or in Volume III of the Final CCP EIS.

The Final CCP EIS identifies and provides an evaluation of four alternative boundaries for Stillwater NWR and five alternative management approaches for managing the Stillwater NWR Complex for the next 15 years. The five alternatives considered in detail in the Final CCP EIS are described below. Under all Alternatives, Anaho Island NWR management would remain as it has been, and the Island would be closed to public use.

Alternative A (No Action Alternative) would retain the existing boundaries

and entails baseline management as outlined in the 1987 Management Plan for Stillwater WMA and modified by the U.S. Fish and Wildlife Service's (Service's) water rights acquisition program. Water rights acquired for refuge wetlands would continue to be delivered to the refuge according to the traditional agricultural seasonal pattern of delivery in the irrigation district. Habitat management would emphasize breeding habitat for waterfowl and other waterbirds and would also provide for the needs of migrating and wintering waterfowl; livestock grazing and muskrat trapping would be managed commensurate with wildlife objectives on a large part of the area; and hunting would remain the priority public use and would continue to be a coequal purpose with wildlife conservation.

Alternative B would result in the lands within Stillwater WMA reverting back to U.S. Bureau of Reclamation or public land status, thus reducing the amount of Federal land managed primarily for wildlife conservation in the Lahontan Valley. This alternative would focus on providing fall and winter habitat for waterfowl on Stillwater NWR and would emphasize fall deliveries of acquired water rights, but would also provide habitat for breeding waterbirds. Livestock grazing and muskrat trapping would only be used as habitat management tools. Opportunities for waterfowl hunting on Stillwater NWR would continue to be emphasized, although opportunities for wildlife viewing and environmental education would be expanded. Providing breeding habitat for waterbirds would be emphasized on Fallon NWR.

Under Alternative C, Stillwater NWR would be expanded to include most of Stillwater WMA and Fallon NWR, as well as additional riparian and dune habitat. A more thorough description of the boundary revision process for Alternative C is included in the Alternative E discussion (*i.e.*, the proposed boundary for Alternatives C and E are identical). This alternative would emphasize the approximation of natural biological diversity, including breeding habitat for waterbirds. The natural seasonal pattern of water inflow would be approximated, with adjustments to minimize nest flooding and to enhance fall and winter habitat for waterfowl. Livestock grazing would have limited application in the habitat management program, and muskrat trapping would primarily be undertaken to prevent damage to water control structures. Waterfowl hunting would continue to be an integral part of the public use program under Alternative C, but environmental education and wildlife observation would receive considerably greater emphasis.

Alternative D would expand the boundary of Stillwater NWR to include all of Stillwater WMA (except the Indian Lakes area) and Fallon NWR, as well as additional riparian and dune habitat. This alternative would focus on restoring natural hydrologic patterns and other ecological processes. Protection and restoration of riparian habitat would receive enhanced emphasis, and livestock grazing and muskrat trapping would not be used in the habitat management program and would be prohibited. Public use management would focus on providing opportunities for wildlife observation and environmental education, and hunting opportunities would diminish.

Alternative E (the Service preferred Alternative) proposes that the revised boundary of Stillwater NWR exclude the western portions of the Stillwater WMA and the northern portions of Fallon NWR. In the Stillwater WMA this would be accomplished by recommending that Congress withdraw certain project lands giving FWS primary jurisdiction. To include the southern portion of Fallon NWR, The FWS would recommend that Congress revoke the E.O. that gave Bureau of Reclamation primary jurisdiction over portions of Fallon NWR and withdraw those lands giving FWS primary jurisdiction.

Major habitats added to Stillwater NWR would include the lower Carson River and its delta marsh, the sand dunes along the southern edge of the Carson Sink, and the stabilized dunes and salt desert shrub habitat between the Carson River and Stillwater Marsh. In addition to lands currently in Stillwater WMA and Fallon NWR, the boundary would expand to include six sections of land along the lower Carson River and 26 sections north of the existing Stillwater NWR. Although the size of Stillwater NWR would increase under this alternative, the acreage of Federal lands managed primarily for wildlife in the Lahontan Valley would decline by about 25,517 acres. The most important lands with respect to refuge purposes and wetlands protection would be retained. Under this proposal, the approved boundary of Stillwater NWR would be about 172,254 acres, of which about 137,504 acres would be Federal. The acreage of non-Federal inholdings within the boundaries of Federal wildlife areas in the Lahontan Valley would decline by about 40 percent.

This alternative would attempt to approximate natural biological diversity, including breeding habitat for waterbirds, but would also emphasize adaptive management to refine broad management strategies to meet the needs of key wetland dependent wildlife guilds and to provide additional fall and winter habitat for migratory waterbirds. Livestock grazing would have limited application in the habitat management program, and muskrat trapping would primarily be undertaken to prevent damage to the water management infrastructure. Waterfowl hunting would continue to be an integral part of the visitor services program under Alternative E, but a more balanced approach to managing other wildlife dependent recreational activities including environmental education and interpretation, and wildlife observation and photography, would receive considerably greater emphasis.

Dated: May 23, 2002.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–13631 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Lower Brule Sioux Tribe and the State of South Dakota, which was executed on February 14, 2002.

DATES: This action is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 1, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–13651 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Eighth Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding the Class III Gaming on the Northern Cheyenne Reservation.

DATES: This action is effective May 31, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 2, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–13650 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–02–1610–DS]

Notice of Availability of Draft California Desert Conservation Area Plan Amendment for the Coachella Valley, Draft Trails Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft California Desert Conservation Area (CDCA) Plan Amendment for the Coachella Valley, Draft Trails Management Plan and Draft Environmental Impact Statement (DEIS).

SUMMARY: In compliance with Title 43 Code of Federal Regulations (CFF) Part 1610.2(f)(3) and Title 40 CFR part 1500, the Bureau of Land Management (BLM) hereby gives notice that the Draft CDCA Plan Amendment for the Coachella Valley, Draft Trails Management Plan, and DEIS is available for public review and comment.

DATES: Comments will be accepted until 90-days have elapsed after publication of notice in the **Federal Register** by the Environmental Protection Agency (EPA).

ADDRESSES: If you wish to comment, you may submit your comments by any of several methods. You may mail comments to: James G. Kenna, Field Manager; Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 581260, North Palm Springs, CA 92258.

You may also comment via the Internet to *emisquez@ca.blm.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include in the subject line: ''Draft CDCA Plan Amendment and EIS'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Elena Misquez at (760) 251–4810. Finally, you may hand-deliver comments to: Bureau of Land Management, Palm Springs-South Coast Field Office, 690 W. Garnet Avenue, North Palm Springs, CA 92258.

Oral comments will be accepted and recorded at any of three public meetings to be held during the month of July, 2002. Notice published in local media will also be provided at least 15 days prior to the scheduled public meetings.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Elena Misquez at (760) 251–4810 or *emisquez@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: A copy of the Draft CDCA Plan Amendment for the Coachella Valley, Draft Trails Management Plan, and DEIS is available for review via the internet at *www.ca.blm.gov/palmsprings.* Electronic (on CD-ROM) and paper copies may also be obtained by contacting Elena Misquez at the aforementioned addresses and phone number.

This Draft CDCA Plan Amendment for the Coachella Valley and draft Trails Management Plan is being developed in partnership with the Coachella Valley Association of Governments (CVAG) in support of their efforts to prepare a Coachella Valley Multi-Species Habitat Conservation Area Plan (CVMSHCP). The Trails Management Plan will be incorporated into the CVMSHCP. Upon completion of the environmental impact statement/environmental impact report for the CVMSHCP, BLM may adopt the CVMSHCP as an activity (implementation) level plan in accordance with Bureau Manual guidance and the National Environmental Policy Act of 1969 (NEPA). A separate record of decision will be prepared for the CDCA Plan Amendment for the Coachella Valley in accordance with the planning regulations at Title 43 CFR 1610 and NEPA.

Dated: May 6, 2002.

James G. Kenna,

Field Manager.

[FR Doc. 02–13475 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–02–5101–ER–F330; (N–74943)]

Notice of Realty Action; Notice of Availability of Draft Amendment and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action and notice of availability of the Draft Toquop Land Disposal Amendment to the Caliente Management Framework Plan (MFP) and Draft Environmental Impact Statement (DEIS) for the Toquop Energy Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, a DEIS has been prepared by the Bureau of Land Management (BLM), Ely Field Office for the Toquop Energy Project. This document evaluates the environmental

effects from constructing a 1,100-megawatt (MW) natural gas-fired electric power generating plant and associated features on public lands in Lincoln and Clark Counties, southern Nevada. This document also evaluates the effects of amending the Caliente MFP, to identify 640 acres of land for disposal. This document evaluates the exchange of approximately 640 acres of private land (the Pah Rah parcel) in Washoe County, northwestern Nevada, for a similarly valued parcel of public land at one of the power plant sites under consideration. The Pah Rah parcel would come under BLM administration if the Pah Rah/Toquop land exchange is approved.

DATES: The DEIS will be made available to the public on May 31, 2002. Copies of the DEIS will be mailed to individuals, agencies, or companies who previously requested copies. Mailed comments on the DEIS must be postmarked by August 29, 2002. Written comments on the document should be addressed to Gene A. Kolkman, District Manager, Bureau of Land Management, Ely Field Office, HC 33, Box 33500, Ely, NV 89301–9408. Oral and/or written comments may also be presented at four scheduled public meetings to be held at the following locations.

—Monday, July 8, 2002, from 7 p.m. to 9 p.m.; City Hall, 100 Depot Avenue, Caliente, Nevada
—Tuesday, July 9, 2002, from 7 p.m. to 9 p.m.; City Hall, 10 E. Mesquite Boulevard, Mesquite, Nevada
—Wednesday, July 10, 2002, from 7 p.m. to 9 p.m.; BLM Las Vegas Field Office, 4701 Torrey Pines Drive, Las Vegas, Nevada
—Thursday, July 11, 2002, from 7 p.m. to 9 p.m.; Airport Plaza Hotel, 1981 Terminal Way, Reno, Nevada

ADDRESSES: Public reading copies of the DEIS will be available for reading at public libraries listed below:

—Caliente Branch Library, P.O. Box 306, Caliente, NV 89008
—Clark County Library, 1401 East Flamingo Road, Las Vegas, NV 89109
—Las Vegas Public Library, 1726 East Charleston Boulevard, Las Vegas, NV 89104
—Lincoln County Library, P.O. Box 330, Pioche, NV 89043
—Mesquite Library, 121 West 1st North Street, Mesquite, NV 89027
—North Las Vegas Library, 2300 Civic Center, North Las Vegas, NV 89030
—Panaca High School Library, P.O. Box 268, Panaca, NV 89042
—University of Nevada-Las Vegas, James R. Dickinson Library, Documents Department, 4505 South Maryland Parkway, Las Vegas, NV 89154
—University of Nevada-Reno, Getchell Library, Government Publication Dept., Reno, NV 89507
—Washoe County Library, 301 South Center Street, Reno, NV 89501
—White Pine County Library, 950 Campton Street, Ely, NV 89301

A limited number of copies of the document will be available at the following BLM offices:

—Bureau of Land Management, Caliente Field Station, U.S. Highway 93, Caliente, NV 89008–0237
—Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701
—Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, NV 89301–9408
—Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502–7147
—Washington Office of Public Affairs, 18th and C Street, NW, Washington, DC 20240

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this definitively at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, Team Lead, Bureau of Land Management, Ely Field Office, HC 33, Box 33500, Ely, NV 89301–9408.

SUPPLEMENTARY INFORMATION: The DEIS addresses alternatives to resolve the following major issues: Air quality, surface water, ground water, threatened or endangered species, transportation, visual resources, noise, cultural and historical resources, Native American religious concerns, and socioeconomics.

The Proposed Action, two other action alternatives, and the No Action Alternative include the following: Proposed Action (MFP Amendment Land Exchange and/or Southern Power Plant Site right-of-way (ROW), Western Utility Alignment ROW, and access road ROW); Alternative 1 (MFP Amendment, Land Exchange and/or Southern Power Plant Site, Eastern Utility Alignment, and access road ROW); Alternative 2 (MFP Amendment, Land Exchange, and/or Northern Power Plant Site, Eastern Utility Alignment ROW, and access road ROW); No Action Alternative.

The Proposed Action and each action alternative include the following project actions and features: amending the Caliente MFP, exchanging BLM-managed public land for a privately owned parcel of land, and/or issuing ROWs by the BLM for Toquop Energy Project construction and operation; constructing, operating, and maintaining a 1,100–MW natural gas-fired electric power generating plant on one of two candidate plant sites with an expected life of 42 years; developing a wellfield in the Tule Desert to meet the water needs of the power plant; and developing the linear infrastructure necessary to connect the power plant to the new water source, to existing natural gas and electric transmission lines serving the region, and to access site facilities. The Proposed Action and Alternative 1 differ primarily in the location of the utility alignment (western vs. eastern). The Proposed Action and Alternative 2 differ primarily in the location of the power plant site (southern vs. northern) and, therefore, the parcel of BLM-managed public land to be exchanged. An option to the Proposed Action, Alternative 1, and Alternative 2 is for the BLM to issue ROWs for all project features rather than amend the Caliente MFP and approve the proposed land exchange.

The No Action Alternative represents the status quo condition of not approving or implementing the Proposed Action or either of the action alternatives. Analysis of the No Action Alternative is required by NEPA guidelines.

Based upon input received during public scoping, the BLM has combined the Toquop Energy Project DEIS with a related Environmental Assessment (EA) that the Carson City field office of the BLM had been preparing for the proposed Pah Rah/Toquop Land Exchange. That EA had been evaluating the exchange of approximately 640 acres of private land owned by the NLRC in the Pah Rah Range in Washoe County for a similarly valued, BLM-managed parcel of public land near the Toquop Wash in Lincoln County. The proposed land exchange is now being evaluated as part of the Proposed Action and Alternative 1 in this DEIS. The separate EA process for the proposed Pah Rah/Toquop land exchange has been discontinued. In addition, BLM elected to initiate amendment of the Caliente MFP.

A different land exchange would occur under Alternative 2. Under this alternative, the same privately owned parcel in Washoe County would be exchanged for a parcel of BLM-managed public land approximately 12 miles

north-northwest of the Toquop Wash plant site. This alternative site would be adjacent to and contiguous with the proposed wellfield in the Tule Desert. That wellfield is necessary for the Proposed Action and both action alternatives. These proposed land exchanges are part of the Proposed Action and action alternatives being addressed in this Draft Caliente MFP Amendment/DEIS. To proceed with the land exchange, the public land to be disposed of must be identified in the Caliente MFP as being suitable for disposal through sale or exchange. It has been determined that additional analysis is needed in the Caliente MFP for the 640 acres of public land that have been identified for exchange under the Proposed Action or action alternatives. Therefore, this document contains a focused Plan Amendment that addresses the proposed land exchange. The Pah Rah section of land to be acquired already meets the criteria for land acquisition in the Lahonton RMP, which is contained within the Consolidated RMP developed and administered by the BLM's Carson City Field Office. Therefore, no amendments to those RMPs are needed. The project might optionally proceed by building the power plant on public land with the issuance of appropriate ROWs from the BLM.

Public participation is occurring throughout the processing of this project. A Notice of Intent was published in the **Federal Register** on November 7, 2001. Two rounds of public meetings were held. Comments presented throughout the process have been considered.

Dated: April 10, 2002.

Eric K. Luse,

Associate Field Manager.

[FR Doc. 02–13379 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Klamath Project, Oregon

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Order Establishing Prohibitions in Areas of Bureau of Reclamation Lands and Projects.

SUMMARY: Pursuant to 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects, the Bureau of Reclamation has established a Closure Order for certain lands and waters of the Klamath Project in the State of Oregon. The Order prohibits trespassing, entering, or remaining in or upon the closure areas as described; tampering or attempting to tamper with the facilities, structures or other property located within the closure areas; or moving, manipulating, or setting in motion any parts thereof; vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

In accordance with 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands, Reclamation is publishing the Closure Order in the **Federal Register**.

DATES: April 25, 2002 until October 15, 2002.

ADDRESSES: Klamath Basin Area Office, 6600 Washburn Way, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Dave Sabo, Area Manager, (541) 883–6935.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in me under the regulations of the Secretary of the Interior, 43 CFR part 423, public access to the following facilities, lands, or waters is closed until October 15, 2002:

A Canal Headgate Area—The closure area includes all lands, waters and facilities within 100 feet of either side of the centerline of the A Canal which lies between the Highway 97 onramp and the canal's confluence with Upper Klamath Lake. This closure area includes the entire A Canal headgate facility and related structures, walkways, gate operating mechanisms and all lands surrounding such structures within the described area.

Link River Dam—The closure area includes the entire dam structure and surrounding lands and water 100 feet downstream and 50 feet upstream of the dam and 50 feet from the right and left abutments.

Station 48 Drop—The closure area includes the land, water and facilities within and including the existing fence surrounding the headgate structure.

Klamath Basin Area Office Headquarters Area—The closure area includes the land and facilities immediately adjacent to and south of the KBAO office building and lying within and including the existing chain link fence which is bounded on the north by Joe Wright Road and on the east by Washburn Way and excludes the formal offices of the Fish and Wildlife Service and the Bureau of Reclamation.

The following acts are prohibited on the facilities, lands and waters in the closure area:

1. Trespassing, entering, or remaining in or upon the closure areas described above. Exceptions: Operations and Maintenance personnel that have express authorization from Reclamation, law enforcement officers and Reclamation employees acting within the scope of their employment, and any others who have received express written authorization from Reclamation to enter the closure areas.

2. Tampering or attempting to tamper with the facilities, structures or other property located within the closure areas or moving, manipulating, or setting in motion any of the parts thereof. Exceptions: *see* 1 above.

3. Vandalism or destroying, injuring, defacing, or damaging property within the closure areas or real property that is not under one's lawful control or possession. This order is posted in accordance with 43 CFR part 423.3(b).

Dated: May 7, 2002.

Dave Sabo,

Area Manager, Klamath Basin Area Office.

[FR Doc. 02–13630 Filed 5–30–02; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 2, 2002, a proposed Consent Decree in *United States* v. *Stallworth Timber Co., Inc.,* Civil Action No. 02–0864 was lodged with the United States District Court for the Western District of Louisiana.

In this action the United States sought response costs pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') Section 107, 42 U.S.C. 9607. The proposed Consent Decree resolves civil claims of the United States against Stallworth Timber Company, Inc. (''Stallworth''), the former owner and operator at the time of disposal of hazardous substance at the American Creosote Works, Inc. Superfund Site (the ''Site'') located in the City of Winnfield, Winn Parish, Louisiana. Under the proposed Consent Decree, Stallworth agrees to pay $100,000 of the United States' past response costs related to the Site in installment payments over the course of four years.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources

Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Stallworth Timber Co., Inc.* (W.D.La.), D.J. Ref. 90–11–3–07436.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Louisiana, 800 Lafayette Street, Lafayette Louisiana, and at the offices of U.S. Environmental Protection Agency Region 6, 1445 Ross Ave, Suite 1200, Dallas, Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing a request to Tonia Fleetwood, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas Mariani,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 02–13627 Filed 5–30–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part I, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein. Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and States:

Volume VII

Mariana Islands
CM020001 (May 31, 2002)

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

South Carolina
SC020023 (Mar. 01, 2002)

Volume IV

Michigan
MI020004 (Mar. 01, 2002)
MI020027 (Mar. 01, 2002)

Volume V

None

Volume VI

None

Volume VII

California
CA020009 (Mar. 01, 2002)
CA020029 (Mar. 01, 2002)
CA020030 (Mar. 01, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determination issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://*

davisbacon.fedworld.gov) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 23rd Day of May, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–13547 Filed 5–30–02; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Voluntary Reporting of Performance Indicators.

2. *Current OMB approval number:* 3150–0195.

3. *How often the collection is required:* Quarterly.

4. *Who is required or asked to report:* Power reactor licensees.

5. *The number of annual respondents:* 103 reactors.

6. *The number of hours needed annually to complete the requirement or request:* 83,720 hours (813 hours per unit).

7. *Abstract:* As part of a joint industry-NRC initiative, the NRC receives information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). PIs are objective measures of the performance of licensee systems or programs. The NRC's reactor oversight process uses PI information, along with the results of audits and inspections, as the basis for NRC conclusions regarding plant performance and necessary regulatory response. Licensees transmit PIs electronically to reduce burden on themselves and the NRC.

Submit, by July 30, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/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 about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *Infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of May 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13654 Filed 5–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB); Comment Request

AGENCY: U.S. 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:* NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters''.

3. *The form number if applicable:* NRC Form 241.

4. *How often the collection is required:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a licensee engaging in activities under the general license.

5. *Who will be required or asked to report:* Any licensees who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

6. *An estimate of the number of responses:* 4,232.

7. *The estimated number of annual respondents:* 184 respondents from Agreement State licensees.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 1,104 hours.

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Under the reciprocity provisions of 10 CFR part 150, any

Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in section 150.20, is required to file four copies of NRC Form 241, ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters,'' and four copies of its Agreement State license at least 3 days before engaging in such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

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 worldwide 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 July 1, 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 (3150–0013), 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 23rd day of May 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13652 Filed 5–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB); Comment Request

AGENCY: U.S. 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:* NRC Form 483, ''Registration Certificate—*in vitro* Testing with Byproduct Material Under General License''.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

5. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

6. *An estimate of the number of responses:* 364.

7. *The estimated number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 42 hours.

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

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 worldwide 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 July 1, 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 (3150–0038), 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 23rd day of May 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13653 Filed 5–30–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–10 and NPF–15, issued to the Southern California Edison Company (SCE/the licensee), for operation of the San Onofre Generating Station (SONGS), Units 2 and 3 located in San Diego County, California.

The proposed amendment would revise Technical Specification 5.5.2.11.f.1.h, ''Steam Generator (SG) Tube Surveillance Program,'' to more clearly delineate the scope of the SG

tube inspection required in the tubesheet (TS) region.

Recent conference calls were held between NRC staff members and SCE to discuss the planned SONGS SG tube inspections. During the teleconferences, the NRC staff asked questions on the extent of the tube inspections that were being planned with a rotating probe within the TS region. SCE stated that the extent of its rotating plus point probe inspections in the TS region would cover 5 inches (as a minimum) below the top of the hot leg TS. SCE also stated it will repair or plug on detection any tubes with indications of cracking. The NRC requested that SCE clarify the tube inspection criteria within the TS for this region of the tube. Consequently, SCE is proposing a technical specification change to clarify the extent of the current SONGS technical specification tube inspections. For SONGS Unit 2, the technical specification change is needed by June 12, 2002, to support entry into Mode 4 from the current refueling outage. Therefore, SCE has requested an exigent technical specification change to clarify the SG inspections to be performed so that the plant can be restarted.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Southern California Edison (SCE) proposes to modify the San Onofre Units 2 and 3 Technical Specifications to define the SG tube inspection scope. The San Onofre Nuclear Generating Station (SONGS)-specific analysis takes into account the reinforcing effect the TS has on the external surface of an expanded SG tube.

Tube-bundle integrity will not be adversely affected by the implementation of the TEA [tube engagement area] tube inspection scope. SG tube burst or collapse cannot occur within the confines of the TS; therefore, the tube burst and collapse criteria of draft Regulatory Guide (RG) 1.121 are inherently met. Any degradation below the TEA length is shown by analyses and test results to be acceptable, thereby precluding an event with consequences similar to a postulated tube rupture event.

Tube burst is precluded for cracks within the TS by the constraint provided by the TS. Thus, structural integrity is maintained by the TS constraint. However, a 360-degree circumferential crack or many axially oriented cracks could permit severing of the tube and tube pullout from the TS under the axial forces on the tube from primary to secondary pressure differentials. Testing was performed to define the length of non-degraded tubing that is sufficient to compensate for the axial forces on the tube and thus prevent pullout.

In conclusion, incorporation of the TEA inspection scope into San Onofre Units 2 and 3 Technical Specifications maintains existing design limits and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Tube-bundle integrity is expected to be maintained during all plant conditions upon implementation of the proposed tube inspection scope. Use of this scope does not induce a new mechanism that would result in a different kind of accident from those previously analyzed. Even with the limiting circumstances of a complete circumferential separation of a tube occurring below the TEA length, SG tube pullout is precluded and leakage is predicted to be maintained within the Final Safety Analysis Report limits during all plant conditions. Therefore, a possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change does not involve a significant reduction in a margin of safety.

Upon implementation of the TEA inspection scope, operation with potential cracking below the TEA length in the explansion region of the SG tubing meets the margin of safety as defined by RG 1.121 and RG 1.83 and the requirements of General Design Criteria 14, 15, 31, and 32. Accordingly, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 1, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr.* If a

request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(is)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 22, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of May, 2002.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–13655 Filed 5–30–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45983; File No. SR–NASD–2002–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Permanent Approval of the Primex Auction System ®

May 23, 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 May 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is seeking permanent approval of its application of the Primex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Auction System® (''Primex'' or ''System''). The System began operating as a Pilot Trading System on December 17, 2001, pursuant to Rule 19b–5 of the Act.[3] Pursuant to paragraph (f) of Rule 19b–5 of the Act,[4] Nasdaq has filed a companion proposed rule change to continue operating the System while the Commission considers granting permanent approval.[5] The companion proposed rule change is effective upon filing. The Exchange represents that the proposed rule language contained in the companion filing and set forth below is identical and is the same language that governs use of the System today.

5010. NASDAQ Application of the PRIMEX AUCTION SYSTEM®

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) ''Application'' or ''Nasdaq Application'' as used in this Rule Series, and ''Nasdaq Application of the Primex Auction System'' as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an anonymous, electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to ''lock in'' these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

(b) ''Primex Auction System Participant,'' ''Participant,'' or ''Participant Firm'' means a broker-dealer registered with the NASD that, when authorized, can access and participate in the Application for its customers or its own account, consistent with this Rule Series. Participants access the Application through one or more Subscribers associated with that Participant within the Application.

(c) ''Subscriber'' means a user associated with a Participant who, when authorized, can access and participate in the Application on behalf of that Participant, consistent with this Rule Series. A user also can access and participate directly in the Application on its own behalf, but in the name of a Participant, subject to a sponsored arrangement with that Participant, and consistent with these Rules.

(d) ''Firm Administrator'' means a Subscriber who, for a particular Participant, is authorized among other things to: (1) Monitor and control access to and participation in the Application by all of that Participant's Subscribers, including establishing Credit Limits for each of the Participant's Subscribers who access and participate in the Application on behalf or in the name of that Participant; and (2) view the status of the Clearing Limits applicable to the Participant overall.

(e) ''Nasdaq Supervisor'' means the Nasdaq staff responsible for establishing and supervising certain operational functions with respect to the operation of the Application.

(f) ''Credit Limits'' means the dollar amount of aggregated purchases or sales established within the Application by a Participant's Firm Administrator for each of the Participant's Subscribers which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be established, monitored, and modified by the Firm Administrator on a real-time basis directly through the Application.

(g) ''Clearing Limits'' means the dollar amount of aggregated purchases and sales (calculated separately and not netted) of all Subscribers, collectively for a Participant, effected through or in the name of that Participant, that is established within the Application for that Participant, which, when reached, causes the Application to: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

(h) ''Crowd,'' ''Primex Crowd'' or ''Crowd Participant'' means Primex Auction System Participants that, when authorized, can access and participate in the Application consistent with this Rule Series by: (1) Submitting orders to be exposed to other Participants; (2) viewing orders submitted by other Participants; and (3) submitting Responses and Indications for the purpose of interacting with the orders of other Participants.

(i) ''Watch List'' means the list of Primex Eligible Securities identified by a Crowd Participant for which the Crowd Participant will be notified by Nasdaq electronically when one or more orders in such securities is exposed in an Auction and made available for response by the Crowd.

(j) ''Primex Auction Market Maker'' means a Participant that, when authorized, may participate in the Application: (1) As a Primex Auction Market Maker consistent with Rule 5020 with respect to those Primex Eligible Securities for which the Participant is registered as a Primex Auction Market Maker; and (2) as a Crowd Participant consistent with Rule 5019 with respect to any Primex Eligible Security.

(k) ''Primex Eligible Security'' means any security listed on the Nasdaq Stock Market and any exchange-listed security eligible for participation in the Intermarket Trading System.

(l) ''Mandatory Eligible Order'' means a public customer order, as more fully defined in Rule 5020, that a Primex Auction Market Maker must submit to the System for exposure in order for the Primex Auction Market Maker to maintain its status as such, subject to any exclusions or minimum permissible amount provided therein.

(m) ''Market Order'' means an order submitted to the Application to purchase or sell a security at the most advantageous price(s) obtainable, without a specified, fixed price.

(n) ''Fixed Price Order'' means an order submitted to the Application to purchase or sell a security at a specified, fixed price or better.

(o) ''Minimum Relative Price Improvement'' means a condition that a Participant may attach to a market order consistent with Rule 5014(a), expressed in terms of the minimum relative price improvement required to execute the order. This condition is expressed in

[3] 17 CFR 240.19b–5.

[4] 17 CFR 240.19b–5(f).

[5] *See* Securities Exchange Act Release No. 45982 (May 23, 2002) (publishing SR–NASD–2002–58 for notice and comment).

terms relative to the best bid (for orders to sell) or best offer (for orders to buy) displayed in the NBBO at the time the order is eligible to be executed against within the Application. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order.

(p) ''Response'' means an instruction submitted to the Application by a Participant, for the purpose of responding to an order or orders being exposed to the Crowd, consistent with Rule 5018.

(q) ''Predefined Relative Indication'' or ''PRI'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, but is expressed in terms relative to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed for the security, consistent with Rule 5018. While resident within the Application, PRIs are ranked to respond to incoming orders in relative price/time priority, but are not displayed, exposed or communicated to any other Participant.

(r) ''Go-Along Indication'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, consistent with Rule 5018. A Go-Along Indication will be triggered to respond to an Auction at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) publicly displayed whenever there has been at least one contemporaneous Crowd execution at such bid or offer, provided there are no PRIs or other orders available to execute against the order(s) in the Auction. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(s) ''Auction'' means the automated process through which orders in Primex Eligible Securities are exposed to Crowd Participants. Orders for the same security being exposed simultaneously (i.e. those which have overlapping exposure periods) are available on an aggregate basis, in whole or in part, for interaction with other Crowd participants, but only during the period of overlapping exposure. An Auction begins when an order is accepted by the Application and exposed to the Primex Crowd, and ends whenever such order(s) (including any orders that subsequently join the Auction in progress) are completely executed or their exposure ceases.

(t) ''Public Order'' or ''Public Customer Order'' means an order for the account of a customer, and not for the account of a broker-dealer, regardless of whether the customer is that of the Participant entering the order or another firm that has routed the customer order to the Participant.

(u) ''Professional Order'' means an order for the proprietary account of a broker-dealer, regardless of whether the broker-dealer is a market maker or specialist, and regardless of whether it is the Participant's own order or the proprietary order of another broker-dealer routed to the Participant.

(v) ''Market Maker Guarantee'' means the feature within the Application that allows a Participant registered as a Primex Auction Market Maker to provide an automatic execution against public customer orders it submits to the Application for exposure in an Auction where such orders are not otherwise subject to an execution. The Application will automatically execute any unexecuted balance of the order against that Primex Auction Market Maker, after the Auction exposure period for the order has expired, consistent with Rule 5020. The Market Maker Guarantee shall be provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired, for any amount of shares established by the Primex Auction Market Maker for the order.

5012. Access

(a) The Application shall be available on a voluntary basis to any NASD member in good standing that chooses to register as a Participant in the Primex Auction System. Such registration shall be conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) Execution of the necessary agreements with Nasdaq or its affiliate;

(2) Membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which Primex Auction System compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of Nasdaq (including these rules) and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the Participant to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Primex Auction System; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the Primex Auction System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such execution by the clearing member on the regularly scheduled clearing date.

(b) Non-NASD members may access the Application in the name of a Participant by becoming a sponsored Subscriber of the Participant, provided the Participant and sponsored Subscriber have executed the necessary agreements with Nasdaq or its affiliate, and the NASD member Participant assumes the responsibilities set forth in paragraph (a) of this Rule 5012 with respect to any activity conducted by the sponsored Subscriber.

(c) The Application may be made available through Nasdaq-provided network(s) via:

(1) Primex Auction System Workstation Service;

(2) An Application Programming Interface (''API''); or

(3) A FIX protocol interface. Certain functionality of the Application also may be made available via Computer to Computer Interface (CTCI).

5013. Order Acceptance and Exposure

(a) Order Types

The Application shall accept the following types of orders in Primex Eligible Securities, subject to any conditions or match parameters attached thereto to the extent permitted by the Application and Rule 5014, and other rules applicable to Participants with respect to the entry of orders. Conditions and match parameters, to the extent attached to an order, are never communicated to any Participant:

(1) Market Orders;

(2) Fixed Price Orders, when the specified price is equal to or between the best bid or offer publicly displayed, or is a buy (sell) order priced higher (lower) than the best offer (bid) publicly displayed. Fixed Price Orders to buy (sell) priced below (above) the best bid (offer) publicly displayed will be rejected.

For example: If the best bid and offer publicly displayed in Nasdaq is $20—$20.10, then the Application will accept orders to buy priced at $20.00 and higher, including orders to buy priced higher than the offer of $20.10 (although no execution can take place outside of the NBBO prevailing at the time of execution). An order submitted to buy at $19.95, however, would not be accepted by the Application in this situation and will be returned to the Participant that entered it.

(b) Order Size

The Application will accept orders that are either round lots, or mixed lots. Odd lot orders will not be accepted.

(c) Exposure Times Available

(1) The Application allows Participants to expose orders to the Primex Crowd. Only the size associated with an order is communicated to the Crowd, and only for the time during which the order is available for execution. Crowd Participants may monitor the availability of orders exposed in an auction through the use of their Watch List.

(2) For each Market Order submitted to the Application, a Participant can specify a maximum exposure time of either 0 (*i.e.*, immediate), 15, or 30 seconds. Participants that are Primex Auction Market Makers for a security may submit Market Orders in that security for an immediate (*i.e.* ''zero second'') Auction, provided the Participant attaches certain match parameters as set forth in Rule 5014(b). Market Orders for at least 10,000 shares or $200,000 in market value are also eligible for a zero second Auction, regardless of whether or not match parameters are attached.

(3) Fixed Price Orders that are accepted by the Application can only be exposed for an immediate execution, in whole or in part.

5014. Conditions and Match Parameters

(a) For All Participants

Subject to any other rules applicable to Crowd Participants and Primex Auction Market Makers with respect to the entry of orders, any Participant may enter an order with the following condition attached:

Minimum Relative Price Improvement

Market Orders may be submitted with a condition for Minimum Relative Price Improvement. The Minimum Relative Price Improvement established for an order is the minimum amount of price improvement superior to the best bid or offer publicly displayed (as applicable) that the order must receive before it may be executed against in whole or in part by any interest from the Crowd. This condition must be attached before the order is entered into the Application. Such condition may be expressed only in terms relative to the best bid or offer on the opposite side of the market existing at such time when any Indication, Response, or other order is or becomes available to interact with the order in an Auction, as permitted by the Application and this Rule Series. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order. This condition shall not be available for orders submitted solely for the proprietary account of a Nasdaq market maker or CQS market maker (including Primex Auction Market Makers) and not involving a customer order.

For example: an order to buy 500 shares entered into the Application may contain a condition for Minimum Relative Price Improvement requiring that any Indication or Response (or sell order exposed in an Auction and which is available for a match) provide to that order at least a certain amount (*e.g.,* 3 cents) of price improvement superior to the best offer publicly displayed at such time the Indication, Response or sell order is available to be matched with the order to buy.

(b) For Primex Auction Market Makers Only

A Participant registered as a Primex Auction Market Maker for a particular security is entitled, but not required, to enter customer orders with any of the following match parameters as discussed below. These allow the Primex Auction Market Maker to provide liquidity in addition to that which may be provided by the Crowd. The match parameters contained in this paragraph are only available to Participants who are Primex Auction Market Makers, and only for those securities for which they are so registered. Neither the existence nor type of any match parameter associated with an order is displayed, exposed or communicated to any other Participant:

(1) Two Cent Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with the Two Cent Match parameter.

(A) If there is interest from the Crowd that can satisfy the order, the order entered with the Two Cent Match will be executed against such interest by the Crowd during its exposure, provided that such Crowd interest offers to provide price improvement greater than two cents superior to the best quote publicly displayed in the NBBO at the time such Crowd interest is available.

Note: Because the system will never execute an order at a price outside of the NBBO, any Crowd interest offering an amount of price improvement that would potentially be outside of the NBBO will be executed, if matched with an order, at a price bounded by the NBBO, in effect adjusting the execution price to allow for the maximum amount of price improvement within that NBBO without trading through the NBBO at that time. As a result, it is possible that an order subject to the Two Cent Match parameter may be matched with interest from the Crowd, and not the Primex Auction Market Maker that entered it, notwithstanding the fact that the actual execution price results in price improvement of two cents or less. This can happen, for example, where there is Crowd interest available that is offering three cents of relative price improvement, but the Application causes the actual execution price to be equal to two cents of price improvement, due to a prevailing NBBO spread of two cents at the time of execution.

(B) If there is interest from the Crowd that can satisfy the order but such Crowd interest would only offer price improvement of two cents or less in relation to the best quote publicly available, then this will immediately cause the Application to execute the entire order against the Primex Auction Market Maker that entered it, and not against such Crowd interest, thereby allowing the execution of that order to be retained by the Primex Auction Market Maker. In this situation, the entire order will be executed with that Primex Auction Market Maker at the best price the Crowd interest would have otherwise provided, regardless of the size associated with such Crowd interest.

(C) Any unexecuted balance of the order remaining at the end of its exposure will be executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed in the NBBO.

(D) A Primex Auction Market Maker may enter customer orders of any size with the Two Cent Match parameter.

(E) A Primex Auction Market Maker that enters a Market Order with the Two Cent Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction.

(2) 50% Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a 50% Match parameter.

(A) Orders entered with the 50% Match parameter will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the

order. Any execution with the Crowd will immediately cause the Application to provide the order with an additional execution of like size and price against the Primex Auction Market Maker that entered the order.

(B) Any unexecuted balance of the order remaining at the end of its exposure will be automatically executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be at the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

(C) A Primex Auction Market Maker may enter customer orders of any size with the 50% Match parameter.

(D) A Primex Auction Market Maker that enters a Market Order with the 50% Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction.

For example: The best bid and offer publicly displayed for a security is $20–20.10. A Primex Auction Market Maker for that security enters into the Application a Market Order to buy 2,000 shares for a customer and selects the 50% Match Parameter. The Participant selects an exposure time of 30 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (which could be in the form of Indications, Responses, or contra-side orders to sell): 500 at $20.04, and 200 at $20.05. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 500 and 200 shares, at $20.04 and $20.05, respectively, against the Primex Auction Market Maker entering the order. If there is no other interest from the Crowd at the end of the 30 second exposure period, the Application will cause the remaining balance of 600 shares to be automatically executed against the Primex Auction Market Maker entering the order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Primex Auction Market Maker selling the balance of 600 shares to the customer at $20.10.

(3) Block Facilitation Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a Block Facilitation match parameter, provided the order is for at least 10,000 shares. The Primex Auction Market Maker may elect to expose the order in an Auction for a maximum of 0, 15, or 30 seconds. Any Crowd interest that executes against the order during the selected exposure period, up to a maximum of 50% of the order size, will be immediately matched with an execution of like size and price against the entering Participant until the order is fully executed. If any unexecuted portion remains at the end of the exposure period, it will be automatically executed against the entering Participant. With respect to Market Orders, the execution price will be the then existing best offer (for orders to buy) or best bid (for orders to sell) publicly displayed. With respect to a Fixed Price Order, the execution price will be the price specified in the Fixed Price Order, unless such price is outside of the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

For example: The best bid and offer publicly displayed is $20–20.10. A Participant enters into the Application an order to buy a block of 10,000 shares for a customer and selects the Block Facilitation Match Parameter. The Participant selects an exposure time of 15 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (in the form of Indications, Responses, or contra-side orders to sell): 1000 at $20.05, and 2000 at $20.07. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 1000 and 2000 shares, at $20.05 and $20.07, respectively, against the Participant entering the block order. If there is no other interest from the Crowd at the end of the 15 second exposure period, the Application will cause the remaining balance of 4000 shares to be automatically executed against the Participant entering the block order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Participant selling the balance of 4000 shares to the customer at $20.10.

(4) Clean Cross

A Participant registered as a Primex Auction Market Maker for a particular security may enter a Clean Cross order for the accounts of two separate customers where the order represents both sides of a cross for at least 10,000 shares to be exposed to the Crowd in an immediate, zero second Auction. The two sides will be executed against each other at the midpoint of the best bid and offer publicly displayed unless superior-priced interest within the Application breaks up one or both sides of the cross. In order to break up a side of the cross, there must be Crowd contra-side interest resident within the Application (e.g., resident PRIs) that totals at least 10,000 shares in the aggregate at a price or prices that are all superior to the bid-ask midpoint by at least the nearest whole cent. Any portion of a side that is not executed against either the opposite side of the Clean Cross order or contra-side interest resident within the Application will be returned unexecuted.

5015. Public and Professional Orders

All orders submitted to the Application shall be identified as either a Public Order or a Professional Order, as those terms are defined in Rule 5011. This Public or Professional status is not displayed, exposed or communicated to any other Participant in the Application, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. As indicated in Rule 5018(e), a Participant that responds to orders in an Auction can choose whether its Responses and Indications interact with all orders (both Public and Professional Orders) or just Public Orders. When entering an order, however, a Participant entering an order does not have the ability to select or control whether Public or Professional interest may interact with the order.

5016. Option To Route Orders Outside of the System After Exposure in the Application

(a) All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperSoes℠, in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application is available for Market Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to Nasdaq's other execution systems. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) With respect to exchange-listed securities, only Primex Auction Market Makers (which also must be ITS/CAES market makers with respect to these securities, as required by these rules) may elect to have Market Orders in exchange-listed securities routed out to ITS when there is a balance remaining following exposure in the System, provided, however, that customer orders so routed must first be exposed in the Application for at least 15 seconds. In addition, to the extent the best price publicly quoted at that time is available within Nasdaq's CAES system, regardless of whether the same price also is being publicly quoted by another ITS market center, such orders designated for routing to ITS/CAES will

be delivered to CAES for execution up to the size publicly quoted by CAES participants and will not be routed out to another market center through ITS.

5017. Short Sales

Participants are responsible for complying with applicable short sale rules when using the Application. No Participant shall submit to the Application an order for a security that, if executed, would result in a ''short sale'' as that term is defined in Exchange Act Rule 3b-3, unless the transaction would be exempt from, or otherwise permissible under, the requirements of NASD Rule 3350 or Exchange Act Rule 10a-1, as applicable.

5018. Responses and Indications

(a) *General*—Participants may submit Responses and Indications to the Application, consistent with this Rule Series, for the purpose of interacting with orders in an Auction, as described herein. Responses and Indications are not displayed, exposed or communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses or Indications.

(b) *Responses*—Responses are instructions submitted to the Application by Participants to interact with available orders exposed in an Auction. Responses may be either a Fixed Price Response (e.g. buy 1000 at $20) or a Relative Priced Response (e.g., buy 1000 at the bid plus 3 cents). All Responses must be entered in an amount of at least one round lot, but also may be for a mixed lot.

(c) *Indications*—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication (''PRI'') or a Go-Along Indication.

(1) Predefined Relative Indications

(A) PRIs can be submitted to the Application for the purpose of automatically responding to an Auction at a point in time when one or more orders becomes available. PRIs have no specific, fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the Application activates the PRI against orders in an Auction. While resident within the Application, PRIs are ranked in relative price/time priority among all other PRIs resident within the Application and any same-side orders currently being exposed in an Auction, as indicated in paragraph (e) of this Rule. Neither the existence nor terms of a PRI are displayed, exposed or communicated to any other Participant while resident in the Application. When activated by the Application, a PRI will match against orders in an Auction at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order(s) in the Auction to which it is responding.

(B) At the time of its original entry, each PRI submitted to the Application must be for the following share amounts:

(i) NBBO PRIs must be for at least 3000 shares upon entry;

(ii) NBBO ±.01or .02 must be for at least 2000 shares upon entry;

(iii) NBBO ±.03 or greater must be for at least 1000 shares upon entry.

(C) The Application will accept a PRI with the following amounts of relative price improvement:

(i) If the NBBO, at the time the PRI is submitted, has a spread equal to three cents or more, the PRI will be accepted if it offers any amount of price improvement between zero and the actual NBBO spread prevailing at that time;

(ii) If the NBBO, at the time the PRI is submitted, has a spread that is less than three cents, the PRI may offer any amount of price improvement between zero and three cents.

(D) Participants may elect to limit their exposure when using PRIs by entering a Per Auction Maximum size for each PRI submitted. The Per Auction Maximum represents the maximum share amount of a PRI available for a single Auction. It cannot be greater than the size of the PRI, but is subject to the same minimum values applicable to the original entry of a PRI with that relative price term. Once the Per Auction Maximum, if any, for a PRI is exhausted, the Participant will have 15 seconds to withdraw the PRI, during which time no further executions against that PRI will occur. In the absence of a withdrawal during this period, the Application will restore the PRI up to the Per Auction Maximum and the PRI will become available again for any subsequent Auctions to the extent there is an eligible balance remaining for that PRI. For purposes of relative price/time priority, the restored PRI will receive a new timestamp within the Application.

(E) Participants may select a maximum residency period of one (1) or five (5) days, during which time the PRI remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any PRIs that remain at the end of the applicable residency period.

(2) Go-Along Indications

(A) A Go-Along Indication can be submitted to the Application for the purpose of automatically responding in an Auction at a point in time when one or more orders becomes available in an Auction and there has been at least one other contemporaneous Crowd execution within the Application at the NBBO; provided there are no PRIs available or orders being exposed in an Auction (executions resulting from a Primex Auction Market Maker Guarantee do not trigger Go-Along Indications). Go-Along Indications have no specific, fixed price when entered, but will match against orders at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) that exists at such time the Go-Along Indication is activated. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(B) At the time of its original entry, each Go-Along Indication submitted to the Application must be for at least 10,000 shares.

(C) Participants may select a maximum residency period of one (1) or five (5) days, during which time the Go-Along Indication remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any Go-Along Indications that remain at the end of the applicable residency period.

(d) *Executions Bounded by the NBBO*—Application will never execute an order outside of the NBBO prevailing at the time of execution. Indications such as PRIs that potentially would offer an amount of price improvement that could result in an execution outside of the NBBO will be priced at the NBBO if matched with an order, in effect providing the maximum amount of price improvement permissible within the NBBO at that time.

(e) *Relative Priority Of Predefined Relative Indications and Orders*—(1) While resident within the Application, Predefined Relative Indications are ranked in relative price/time priority while they await activation against incoming orders notwithstanding that PRIs have no specified, fixed price associated with them. For example, among resident PRIs for the same security on the same side of the market, PRIs offering greater relative price improvement are ranked ahead of PRIs

offering less relative price improvement. PRIs offering the same relative amount of price improvement are ranked by time of entry (or the time the Indication was restored after exhausting its Per Auction Maximum).

(2) Market Orders being exposed within the Application also are ranked in relative price/time priority during the life of their exposure, notwithstanding that Market Orders have no specified, fixed price associated with them. For example, among Market Orders in the same security being exposed on the same side of the market, those orders not seeking any relative price improvement are ranked ahead of orders seeking some relative amount of Minimum Relative Price Improvement. Orders seeking a greater relative amount of Minimum Relative Price Improvement are ranked behind orders seeking a lesser relative amount of Minimum Relative Price Improvement. Orders seeking the same relative amount of price improvement are ranked by time of entry.

(3) Among and between Indications and orders on the same side of the market, the relative price/time priorities for each are integrated, based on their respective ranking relative to the best bid and offer publicly displayed. The Application recalculates and maintains these relative priorities whenever there is a change in the best bid or offer prices publicly displayed in the NBBO. Market Orders that are matched with other Market Orders being auctioned are executed at the midpoint of the best bid and offer publicly displayed, provided that such price satisfies any condition for Minimum Relative Price Improvement associated with each order.

(f) *Responding to All Orders or Public Orders Only*—All Responses and Indications shall include an identifier as to whether it may interact with either: (1) All available orders (both Public Orders and Professional Orders); or (2) Public Orders only. Such identifier is not displayed, exposed or communicated to any Participant at any time, but is used by the Application for determining the universe of orders with which the Response or Indication may interact.

5019. Crowd Participation

(a) There are two levels of participation in the Application: Crowd Participant and Primex Auction Market Maker. Becoming a Participant in the Application automatically entitles the Participant to be a Crowd Participant for any security, allowing participation consistent with this Rule 5019. A Crowd Participant may also choose to register as a Primex Auction Market Maker, but only on a security-by-security basis, as set forth in Rule 5020, and only consistent with the requirements for participation under that Rule.

(b) Unless otherwise specified, a Crowd Participant may enter orders, Indications, and Responses in any Primex Eligible Security at any time, for its own account or for the account of a customer. Crowd Participants have no mandatory obligation to submit to the Application any order at any time.

5020. Market Maker Participation

(a) A Participant may register as a Primex Auction Market Maker in one or more Primex Eligible Securities, and may maintain such registration while in compliance with the requirements of this Rule. Unless otherwise specified, a Primex Auction Market Maker is automatically subject to the same rights and obligations of Crowd Participants pursuant to Rule 5019 with respect to customer orders in any and all Primex Eligible Securities. In addition, a Primex Auction Market Maker is entitled, but not obligated, to use either of the following features of the Application when submitting customer orders, but only with respect to those securities in which it is currently registered as a Primex Auction Market Maker:

(1) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with any of the available match parameters that enable the Primex Auction Market Maker to exercise certain matching rights facilitated by the Application, as set forth in Rule 5014(b). When associated with an order, these match parameters are not displayed, exposed or communicated to any other Participant; or

(2) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with a Market Maker Guarantee enabling the Primex Auction Market Maker to guarantee an execution within the Application where such orders are not otherwise subject to an execution as a result of either satisfactory Crowd interest or matching rights processing elected by the Primex Auction Market Maker pursuant to Rule 5014(b) for the order.

(i) Public customer orders of any size are eligible for the Market Maker Guarantee. The Application will facilitate the Market Maker Guarantee by automatically executing any unexecuted balance of the order against the Primex Auction Market Maker that submits the order, after the Auction exposure period for the order has expired.

(ii) The Market Maker Guarantee is automatically provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired (including ''zero second'' auctions), for any amount of shares established by the Primex Auction Market Maker for the order.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) If the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) if the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350;

(3) Submit to the Application a minimum of 80%* of the number of its

*The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; and July 1; 2002, any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. Beginning with the calendar quarter that commences on October 1, 2002, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until December 31, 2002 only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on July 1, 2002 (or during such portion of the calendar quarter that commences on July 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on October 1, 2002 may maintain its status as such until the end of the calendar quarter in which it registered without regard to the

Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

(A) Any customer order that is greater than 1099 shares at origination, except that nothing in these rules prohibits a Participant from submitting orders of greater size at any time;

(B) Any customer order that, when initially received by the Participant, is a Fixed Price Order with a specified price that is not eligible for acceptance by the Application because it is priced outside the NBBO and is not otherwise marketable pursuant to Rule 5013(a)(2), regardless of whether or not the order becomes eligible for acceptance and exposure at a subsequent point in time;

(C) Any customer order placed by a customer who authorizes the Participant to not expose the order, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders;

(D) Any customer order that is an odd lot order (*e.g.,* less than 100 shares);

(E) Any customer order to be executed outside of the hours of operation of the Application; or

(F) Any other order that would not fall within the definition of the term ''covered order'' as defined in Exchange Act Rule 11Ac1–5(a)(8).

(4) Not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

5021. Anonymity, Execution, Reporting, and Clearing

(a) *Anonymity*—The Application will process all activity among Participants on an anonymous basis until the end of the day. After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, but will not contain the identity of the contra-party. At the end of each trading day, the actual contra-party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.

(b) *Tape Reporting and Clearing*—Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the Participant at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application.

5022. Credit Limits and Clearing Limits

(a) *Credit Limits*—The Application shall allow a Participant's Firm Administrator to establish Credit Limits for each of its associated Subscribers, including sponsored Subscribers, on an individual Subscriber basis. The limits are established as a dollar amount of aggregated purchases or sales which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be monitored and modified by the Firm Administrator on a real-time basis directly through the Application.

(b) *Clearing Limits*—The Application shall allow a Participant's clearing broker to establish Clearing Limits within the Application for the Participant on a firm-wide basis. The limits are established as a dollar amount of both purchases and sales (calculated separately, and not netted) of all Subscribers, collectively for a Participant, effected within the Application through or in the name of that Participant. When the Clearing Limits for a Participant are reached, the Application will: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

5023. Hours of Operation

(a) The Application is available for executing securities transactions during regular Nasdaq trading hours whenever there is a free and open quote (*i.e.,* not locked or crossed), subject to the general authority and regulatory responsibilities of Nasdaq or its affiliates in operating the Application as a facility of Nasdaq or its affiliate (including but not limited to its authority to implement trading halts in one or more securities due to regulatory reasons, market-wide emergencies, and system malfunctions).

(b) Nasdaq may permit certain functionality of the Application to be available outside of the time period during which securities transactions may be effected through the Application, including but not limited to, the monitoring, entering, canceling, withdrawing, or modifying resident Indications, Credit Limits, or Clearing Limits.

5024. Limitation of Liability

(a) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System shall have any liability for any loss, damages, claim or expense arising from or occasioned by any inaccuracy,

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percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on January 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

error or delay in, or omission of or from: (1) The Nasdaq Application; or (2) the collection, processing, reporting or dissemination of any information derived from the Nasdaq Application, resulting either from any act or omission by Nasdaq or any affiliate, or any operator, licensor, or administrator of the Nasdaq Application or from any act, condition or cause beyond the reasonable control of Nasdaq or any affiliate, operator, licensor or administrator of the Nasdaq Application, including, but not limited to, flood, extraordinary weather conditions, earthquake or other act of nature, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. If a Participant that enters, authorizes its Subscribers (including sponsored Subscribers) to enter, or is authorized by other Participants to enter orders, Responses, or Indications that result in a transaction through the Application fails to perform its settlement or other obligations under the terms of such transaction, the NASD (and its affiliates) and Primex Trading N.A., L.L.C. (and its affiliates) shall have no liability for such failure to settle.

(b) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System makes any express or implied warranties or conditions to Participants or their associated Subscribers (including sponsored Subscribers) as to results that any person or party may obtain from the Nasdaq Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Nasdaq Application are hereby disclaimed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pilot Trading System

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System, as defined in paragraph (c)(2) of Rule 19b–5 of the Act.[6] As such, Nasdaq was not required to file a proposed rule change pursuant to Rule 19b–4 of the Act[7] as long as the System maintained its status as a Pilot Trading System. Under paragraph (c)(2) of Rule 19b–5 of the Act, a system must comply with three criteria to maintain its status as a Pilot Trading System.[8] One such criteria is that, for each security traded in the System, the System cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex has exceeded this threshold for many securities. Nasdaq also represents that while not all eligible securities have been phased in as of this date, the Primex Auction System has already executed approximately 1.7 million trades representing almost 500 million shares since it began operation just over four months ago. Therefore, Nasdaq is seeking permanent approval of the System pursuant to Section 19(b) of the Act[9] and Rule 19b–4 under the Act.[10]

Background

Nasdaq represents that as market structure continues to evolve, Nasdaq is committed to providing its participants with a variety of sophisticated execution services to automate the trading process in the most efficient manner possible. The Primex Auction System is a hybrid that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment. By incorporating an automated auction process into Nasdaq's existing multi-dealer environment, the System allows participants to facilitate the exposure of their customer orders to the entire market while still allowing these participants to commit liquidity and execution guarantees to their customers. Nasdaq believes that as a consequence, the Primex Auction System can provide increased opportunities for price improvement, enhanced liquidity, and order interaction.

Nasdaq believes that the System can improve upon the traditional auction market model, where market participants gather in a ''crowd'' at a physical location to bid for incoming orders. The crowd sometimes improves the best bid or offer, enhances the liquidity otherwise available, or validates the current quoted prices in the absence of any improvement to the published quotations. Most auction markets employ a single specialist that manages trading in a security and supplies liquidity when there is no buying or selling interest in the crowd.

The Primex Auction System automates many of these elements. By facilitating an ''electronic crowd,'' not bound by the physical limitations of space or the number of persons that can be at any one place at a given time, the System can provide the benefits of an auction model on a larger and more efficient scale. By further combining this within a competitive, multi-dealer structure that has been Nasdaq's hallmark, Nasdaq believes it can make available a greater amount of liquidity than would be available in a market with only one provider of capital. Nasdaq believes the result of this combination and automation is a market-based solution for providing price improvement opportunities and enhanced liquidity.

System Overview

The following is a brief overview of how the System typically will operate. Additional details on the System and its tools can be found within the rules of the System and the Form PILOT.[11]

A customer sends an order to his or her broker, who, in turn, can forward it to the System. The System is voluntary. Once an order is submitted, an auction for that order commences. Through a unique mechanism, the order is exposed to the System's electronic crowd, which can be composed of market makers, proprietary traders, institutions, ECNs and even the orders of other customers. The System's electronic crowd is open to any NASD member (or their

[6] 17 CFR 240.19b–5(c)(2).

[7] 17 CFR 240.19b–4.

[8] Pursuant to Rule 19b–5(c)(2), to qualify as a Pilot Trading System, a system must: (1) be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization. 17 CFR 240.19b–5(c)(2).

[9] 15 U.S.C. 78s(b).

[10] 17 CFR 240.19b–4.

[11] *See supra* note 3.

customers, through a sponsored arrangement), and thus the universe of participants who may have access to these orders is very broad. Using the System's auction response tools, crowd participants anonymously bid for the order at prices at or within the parameters of the National Best Bid and Offer (''NBBO''). The order will be executed if an appropriate match is found in the electronic crowd or if the participant submitting the order provided an execution guarantee. The types of orders that can be submitted and the System's response tools are specified in the attached rules and generally are described below.

Participation in the System

Primex is a voluntary System available to any NASD member and other entities that a member chooses to sponsor. To access the System, a member must be in good standing and have executed the necessary agreements with Nasdaq. Members granted access to the System are referred to as Primex Auction System Participants (''Participants''), and can access the facility for their customers or for themselves. Participants in the System are classified as either Primex Auction Market Makers (''PAMMs'') or Crowd Participants.

Entities that are not members can access the System by becoming a Sponsored Subscriber of a Participant (''Sponsored Subscriber''). The Participant assumes responsibility for all activity conducted through the System by the Sponsored Subscriber and will have the ability to monitor and control such activity, including the ability to monitor and establish credit limits for each Sponsored Subscriber. Participants and their Sponsored Subscribers must have the necessary agreements executed with Nasdaq with respect to these sponsored arrangements.

As mentioned above, there are two categories of Primex Participants: PAMMS and Crowd Participants. By becoming a Participant, a member automatically receives the right to trade as a Crowd Participant for any security eligible for trading in the System. To become a PAMM, a member must register as such with Nasdaq for each security in which the member wishes to trade in such capacity. Members that seek to become PAMMs also must be registered as Nasdaq market makers with respect to Nasdaq-listed securities (*i.e.,* Nasdaq National Market® and The Nasdaq SmallCap Market℠ securities) or Consolidated Quotation Services (''CQS'') market makers with respect to exchange-listed securities. Because Primex is a voluntary service, however, Nasdaq and CQS market makers, or other members for that matter, are neither required to become Participants in the System, nor are they required to become PAMMs.

The rights and obligations of each class of Participant are specified in the rules. Generally, however, for any security eligible for trading in the System, Crowd Participants can do the following: view all orders exposed in the System; interact with any order put to auction in the System by responding to auctions; submit orders to be put to auction; and trade as principal, agent, or riskless principal.

PAMMS have certain obligations when they participate in the System. With respect to any security eligible for trading in the System for which a Participant is registered as a PAMM, it must: maintain a two-sided quote in Nasdaq (or Nasdaq's InterMarket for CQS securities) with respect to any security for which it is registered as a PAMM, and otherwise be in compliance with all applicable NASD rules; and submit to the System a minimum percentage [12] of its Mandatory Eligible [13] public customer orders (including customer orders of another broker-dealer that directs such orders to the PAMM) for those securities in which it is registered as a PAMM.

PAMMs have the same privileges as Crowd Participants, but because they have certain obligations, PAMMs also have additional privileges. PAMMs are entitled but not obligated to: exercise certain matching rights that allow a PAMM to commit capital to its customer orders in conjunction with the auction exposure process; provide execution guarantees for its own customer orders submitted to the System; and use certain types of orders that permit the PAMM to facilitate block trades and ''clean crosses.'' PAMMs also are entitled to share in transaction revenue paid by other Participants when those other Participants execute against a PAMM's customer orders.

System Features

The System is designed to be highly flexible in the types of orders it accepts, how orders are auctioned, and how PAMMs and Crowd Participants can respond to auctions. As such, the System accepts unpriced market orders, as well as orders that have specified, fixed prices that are marketable or priced between the NBBO. Orders can be submitted in any round lot or mixed lot, but odd lot orders are not accepted. The System is not an ''ECN Display Alternative'' under the Order Handling Rules [14] because it does not display limit orders. Fixed price orders are eligible only for ''immediate or cancel'' treatment.

The System also provides a variety of features that allow participants to control the manner in which their orders are exposed for auction. For example, Participants can choose the maximum duration of the exposure for their orders. PAMMs can submit orders with match parameters, or execution guarantees. An order also can be submitted with a condition attached requiring a minimum amount of price improvement relative to the current NBBO at the time of execution. A participant utilizing this feature for an order to buy would specify, when entering the order into the System, that the order be executed only if the auction yields an execution with price improvement of 3 cents below the ''Best Offer'' as publicly displayed in the NBBO at the time of execution.

PAMMs are entitled to attach certain match parameters to customer orders they submit to the System. This feature provides PAMMs the ability to provide additional liquidity to their customer orders, in conjunction with the exposure process. For example, a PAMM may submit a customer order with a 50% match parameter. Any interest provided by the crowd is matched in both size and price by a corresponding execution with the PAMM. This function effectively can double the amount of liquidity otherwise available from the crowd, at prices established by the crowd, for a customer order. It also ensures that the PAMM will participate in no less than 50% of the order. The PAMM must be willing to execute the entire order when using this match parameter, in the absence of sufficient response from the crowd.

PAMMs also can submit customer orders with a Two Cent Match parameter. This function allows the PAMM entering the order to execute the customer order, provided it is willing to match the price established by the crowd for the entire order to the extent the price offered by the crowd is within two cents of the NBBO. If there is crowd interest willing to provide more than two cents of price improvement, the

[12] *See* NASD Rule 5020.

[13] *See* NASD Rule 5011 (definition of ''Mandatory Eligible'') and NASD Rule 5020.

[14] Commission Rules 11Ac1–1 (Quote Rule), and 11Ac1–4 (Limit Order Display Rule), together are commonly referred to as the Order Handling Rules. Specifically, the System is not an ECN Display Alternative under paragraph (c)(5)(ii) of Rule 11Ac1–1 and paragraph (c)(5) of Rule 11Ac1–5.

PAMM loses that portion of the order to the crowd.

PAMMs also are entitled to provide execution guarantees within the System. This feature ensures that any balance of an order remaining after exposing it to the crowd will receive a liquidity guarantee, established by the PAMM for each order submitted, at a price at least as good as the NBBO at that time.

Nasdaq believes the match parameter and execution guarantee features will encourage market maker participation by providing PAMMs the opportunity to continue to commit capital to their own customer orders, in conjunction with a broad exposure process. The process ensures that the PAMM submitting a customer order and the Participants in the electronic crowd both have opportunities to interact with orders in the System in a fair and balanced manner. In all cases, customers receive the benefit of any improved prices generated by the auction process.

Any condition, match parameter, or guarantee must be attached to an order at the time it is submitted to the System. The existence of any condition, match parameter, or guarantee that may be attached to an order is never communicated or displayed to the crowd.

The System also provides participants the option of having the balance of an unexecuted order returned to them or forwarded to other Nasdaq systems for execution. Participants must indicate their preference upon submission of an order to the System. For example, a Participant can submit an order with an indication that it should be forwarded to another Nasdaq system if the order is not completely executed in Primex. To the extent the auction concludes and there is a portion of the order remaining, that balance will be converted by the System to an order that is forwarded to SuperSoes (for Nasdaq National Market securities), SuperMontage (when implemented), or ITS/CAES (for exchange-listed securities, provided the participant also is an ITS/CAES market maker). A Participant's preference is not displayed, exposed or communicated to any other Participant.

The entire auction process is designed to give participants maximum flexibility and choice in how their orders are exposed while allowing for the fastest execution possible. For example, although unpriced market orders generally have a default *maximum* broadcast period of 15 seconds, executions can take place sooner if there are satisfactory responses from the crowd at any time during the exposure of the order. In addition, executions can occur instantaneously when there is crowd trading interest residing in the System. Trading interest can reside in the System when Participants define their interest in advance of an order being auctioned, or when other, contra side orders are already in the process of being exposed in an auction. In addition, participants also may elect to have the order exposed for an immediate or ''zero second'' auction, depending on the size of the order or, as described above, guarantee an execution by committing liquidity in the absence of satisfactory interest from the crowd. Transactions always are executed at or within the NBBO.

Another feature of the System is that it processes all activity among Participants on an anonymous basis until the end of the trading day. After facilitating an execution, the System sends an execution report to all Participants involved. The execution report indicates the details of the transaction, but the identity of the counterparty is withheld. At the end of each trading day, the counterparties' identities are revealed to each other. Nasdaq, however, has the ability to determine the identity of the parties at any time.

Trades executed within the System are reported and settled through the same process as trades executed using other Nasdaq systems. Through ACT, trades are reported to the public tape and forwarded to DTCC for clearing, if necessary. Participants (or their clearing brokers) are the parties responsible for clearing and settling all trades executed through the System. Once a transaction is executed, Participants do not have the ability within the System to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the System associates with the participant at the time of execution. Neither the NASD (and its affiliates), Primex Trading, N.A., LLC (and its affiliates) nor any operator or administrator of the System will be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the System, notwithstanding that, for the remainder of the trading day after a transaction is executed, the identities of the counterparties will not be disclosed to each other by the System.

Trades executed within the System are subject to several levels of risk management. All trades are included in the existing risk management feature of ACT, which allows firms to rely on ACT to monitor all trading activity of executing brokers that clear through them, even when those firms use the System to effect trades.

The System itself provides additional risk management controls. Participants and their clearing firms can closely monitor and control their exposure specifically with respect to System activity, both at an individual subscriber/user level, as well as across an entire firm. Specifically, through the System, supervisory personnel at a Participant firm have the ability to establish credit limits applicable to each individual subscriber/user authorized by that firm to access the System (including any Sponsored Subscriber). The limits are established as a dollar amount of aggregated purchases or sales within the System, which, when reached, cause the System to: (1) Inhibit any future executions or the entry of future interest for that subscriber; (2) cancel any orders and withdraw any indications resident within the System for that subscriber; and (3) send a notice to that subscriber, its firm administrator, and the Nasdaq supervisor. Credit limits can be monitored and modified by the Participant on a real-time basis directly through the System. As a backup, clearing limits also can be established and modified by the Nasdaq supervisor on behalf of the Participant firm.

The System also allows a Participant (or its clearing firm) to establish clearing limits within the System for that Participant on a firm-wide basis. The limits are established as a dollar amount of both purchases and sales (calculated separately, and not netted) of all subscribers of the Participant. When the clearing limits for a Participant are reached, the System will: (1) Inhibit any future executions for all subscribers associated with that Participant; (2) cancel any orders and withdraw any indications resident within the System for all subscribers associated with that Participant; and (3) send a notice to that Participant's firm administrator, the Nasdaq supervisor, and to the clearing firm for that Participant provided that the clearing firm also is a Participant. Clearing limits for a Participant can be monitored on a real-time basis by the Participant's firm administrator, and can be established, monitored, and modified by the firm administrator of the Participant's clearing firm, provided the clearing firm also is a Participant. If the clearing firm is not a Participant, the Nasdaq supervisor, as soon as practicable, will notify the clearing firm that the clearing limits have been reached. Clearing limits also can be established and modified by the Nasdaq supervisor on behalf of the clearing firm.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,[15] in general, and furthers the objectives of Section 15A(b)(6),[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principals of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq also believes that the proposed rule change is consistent with Section 11A(a)(1) of the Act,[17] which sets forth findings of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations. Nasdaq believes its application of Primex is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. Nasdaq believes the System is a hybrid that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment. Nasdaq believes the System can improve on the traditional auction market model by automating many of its elements, including the trading crowd, but will not be bound by physical limitations of space or the number of persons that can be in one physical location at any given time. Nasdaq believes this attribute, combined with a multiple market maker structure provides an opportunity for enhanced liquidity.

Another attribute of the System is that all orders may be exposed to a wider audience and thus have the opportunity to obtain price improvement. Nasdaq believes this provides for order interaction and can facilitate best execution. At the same time, however, the System continues to provide PAMMs with incentives to expose orders and provide liquidity to those orders. To ensure the protection of investors, orders will not be executed at prices inferior to the NBBO.

Nasdaq believes the System also is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Trades executed using the System will be processed through ACT in the same manner as trades executed using other Nasdaq systems. As such, information on these trades will be incorporated in Nasdaq's audit trail, ACT's risk management function, and forwarded to DTCC for clearance and settlement, if necessary. Trades executed in the System also will be disseminated on the public tape.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Prior to filing the Form PILOT, Nasdaq published a Notice to Members describing the operation of the System.[18] One letter was received in response thereto.[19] A copy of the Notice to Members is attached as Exhibit 2 to Nasdaq's proposal. A copy of the comment letter is attached as Exhibit 3 to Nasdaq's proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–2002–60 and should be submitted by June 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13623 Filed 5–30–02; 8:45 am]

BILLING CODE 8010–01–P

[15] 15 U.S.C. 78*o*–3(b).

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78k–1(a)(1).

[18] NASD Notice to Members 00–65 (September 2000).

[19] *See* letter from Antonio Cecin, Managing Director, Director of Equity Trading, U.S. Bancorp Piper Jaffray Inc., to Eugene Lopez, Senior Vice President, Nasdaq, dated January 2, 2001.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45982; File No. SR–NASD–2002–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Temporary Approval of the Primex Auction System®

May 23, 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 April 30, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to continue operating Nasdaq's application of the Primex Auction System® (''Primex'' or ''System''). The System began operating as a Pilot Trading System on December 17, 2001, pursuant to Rule 19b–5 of the Act.[3] Pursuant to paragraph (f) of Rule 19b–5 of the Act,[4] Nasdaq is filing this proposed rule change effective immediately so that it can continue operating the System until the Commission grants permanent approval. Nasdaq has filed a companion proposed rule change which seeks permanent approval of Primex.[5] The proposed rule language contained in the companion filing and set forth below is identical and is the same language that governs use of the System today.

5010. NASDAQ Application of the PRIMEX AUCTION SYSTEM®

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

(a) ''Application'' or ''Nasdaq Application'' as used in this Rule Series, and ''Nasdaq Application of the Primex Auction System'' as used throughout the NASD Rules means the voluntary Nasdaq trading service facility that permits NASD member firms, among other things, to submit orders in Primex Eligible Securities to be exposed to a Crowd of Participants in an anonymous, electronic auction format for the purpose of obtaining an execution for their own account or the account of a customer; to have required reports of any resulting trades automatically disseminated to the public and the industry; and to ''lock in'' these trades as necessary by sending both sides to the applicable clearing agency designated by the Participants involved for clearance and settlement, all in accordance with this Rule Series and other applicable rules and policies of Nasdaq.

(b) ''Primex Auction System Participant,'' ''Participant,'' or ''Participant Firm'' means a broker-dealer registered with the NASD that, when authorized, can access and participate in the Application for its customers or its own account, consistent with this Rule Series. Participants access the Application through one or more Subscribers associated with that Participant within the Application.

(c) ''Subscriber'' means a user associated with a Participant who, when authorized, can access and participate in the Application on behalf of that Participant, consistent with this Rule Series. A user also can access and participate directly in the Application on its own behalf, but in the name of a Participant, subject to a sponsored arrangement with that Participant, and consistent with these Rules.

(d) ''Firm Administrator'' means a Subscriber who, for a particular Participant, is authorized among other things to: (1) Monitor and control access to and participation in the Application by all of that Participant's Subscribers, including establishing Credit Limits for each of the Participant's Subscribers who access and participate in the Application on behalf or in the name of that Participant; and (2) view the status of the Clearing Limits applicable to the Participant overall.

(e) ''Nasdaq Supervisor'' means the Nasdaq staff responsible for establishing and supervising certain operational functions with respect to the operation of the Application.

(f) ''Credit Limits'' means the dollar amount of aggregated purchases or sales established within the Application by a Participant's Firm Administrator for each of the Participant's Subscribers which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be established, monitored, and modified by the Firm Administrator on a real-time basis directly through the Application.

(g) ''Clearing Limits'' means the dollar amount of aggregated purchases and sales (calculated separately and not netted) of all Subscribers, collectively for a Participant, effected through or in the name of that Participant, that is established within the Application for that Participant, which, when reached, causes the Application to: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

(h) ''Crowd,'' ''Primex Crowd'' or ''Crowd Participant'' means Primex Auction System Participants that, when authorized, can access and participate in the Application consistent with this Rule Series by: (1) Submitting orders to be exposed to other Participants; (2) viewing orders submitted by other Participants; and (3) submitting Responses and Indications for the purpose of interacting with the orders of other Participants.

(i) ''Watch List'' means the list of Primex Eligible Securities identified by a Crowd Participant for which the Crowd Participant will be notified by Nasdaq electronically when one or more orders in such securities is exposed in an Auction and made available for response by the Crowd.

(j) ''Primex Auction Market Maker'' means a Participant that, when authorized, may participate in the Application: (1) As a Primex Auction Market Maker consistent with Rule 5020 with respect to those Primex Eligible Securities for which the Participant is registered as a Primex Auction Market Maker; and (2) as a Crowd Participant consistent with Rule 5019 with respect to any Primex Eligible Security.

(k) ''Primex Eligible Security'' means any security listed on the Nasdaq Stock Market and any exchange-listed security eligible for participation in the Intermarket Trading System.

(l) ''Mandatory Eligible Order'' means a public customer order, as more fully defined in Rule 5020, that a Primex Auction Market Maker must submit to the System for exposure in order for the Primex Auction Market Maker to maintain its status as such, subject to any exclusions or minimum permissible amount provided therein.

(m) ''Market Order'' means an order submitted to the Application to purchase or sell a security at the most

[3] 17 CFR 240.19b–5.

[4] 17 CFR 240.19b–5(f).

[5] *See* Securities Exchange Act Release No. 45983 (May 23, 2002) (publishing SR–NASD–2002–60 for notice and comment).

advantageous price(s) obtainable, without a specified, fixed price.

(n) ''Fixed Price Order'' means an order submitted to the Application to purchase or sell a security at a specified, fixed price or better.

(o) ''Minimum Relative Price Improvement'' means a condition that a Participant may attach to a market order consistent with Rule 5014(a), expressed in terms of the minimum relative price improvement required to execute the order. This condition is expressed in terms relative to the best bid (for orders to sell) or best offer (for orders to buy) displayed in the NBBO at the time the order is eligible to be executed against within the Application. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order.

(p) ''Response'' means an instruction submitted to the Application by a Participant, for the purpose of responding to an order or orders being exposed to the Crowd, consistent with Rule 5018.

(q) ''Predefined Relative Indication'' or ''PRI'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, but is expressed in terms relative to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed for the security, consistent with Rule 5018. While resident within the Application, PRIs are ranked to respond to incoming orders in relative price/time priority, but are not displayed, exposed or communicated to any other Participant.

(r) ''Go-Along Indication'' means an instruction that a Participant can submit to the Application for the purpose of responding to an order(s) in an Auction, and which does not contain a specific, fixed price, consistent with Rule 5018. A Go-Along Indication will be triggered to respond to an Auction at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) publicly displayed whenever there has been at least one contemporaneous Crowd execution at such bid or offer, provided there are no PRIs or other orders available to execute against the order(s) in the Auction. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(s) ''Auction'' means the automated process through which orders in Primex Eligible Securities are exposed to Crowd Participants. Orders for the same security being exposed simultaneously (i.e. those which have overlapping exposure periods) are available on an aggregate basis, in whole or in part, for interaction with other Crowd participants, but only during the period of overlapping exposure. An Auction begins when an order is accepted by the Application and exposed to the Primex Crowd, and ends whenever such order(s) (including any orders that subsequently join the Auction in progress) are completely executed or their exposure ceases.

(t) ''Public Order'' or ''Public Customer Order'' means an order for the account of a customer, and not for the account of a broker-dealer, regardless of whether the customer is that of the Participant entering the order or another firm that has routed the customer order to the Participant.

(u) ''Professional Order'' means an order for the proprietary account of a broker-dealer, regardless of whether the broker-dealer is a market maker or specialist, and regardless of whether it is the Participant's own order or the proprietary order of another broker-dealer routed to the Participant.

(v) ''Market Maker Guarantee'' means the feature within the Application that allows a Participant registered as a Primex Auction Market Maker to provide an automatic execution against public customer orders it submits to the Application for exposure in an Auction where such orders are not otherwise subject to an execution. The Application will automatically execute any unexecuted balance of the order against that Primex Auction Market Maker, after the Auction exposure period for the order has expired, consistent with Rule 5020. The Market Maker Guarantee shall be provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired, for any amount of shares established by the Primex Auction Market Maker for the order.

5012. Access

(a) The Application shall be available on a voluntary basis to any NASD member in good standing that chooses to register as a Participant in the Primex Auction System. Such registration shall be conditioned upon the Participant's initial and continuing compliance with the following requirements:

(1) Execution of the necessary agreements with Nasdaq or its affiliate;

(2) Membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which Primex Auction System compared trades may be settled;

(3) Compliance with all applicable rules and operating procedures of Nasdaq (including these rules) and the Commission;

(4) Maintenance of the physical security of the equipment located on the premises of the Participant to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into the Primex Auction System; and

(5) Acceptance and settlement of each trade that is executed through the facilities of the Primex Auction System, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such execution by the clearing member on the regularly scheduled clearing date.

(b) Non-NASD members may access the Application in the name of a Participant by becoming a sponsored Subscriber of the Participant, provided the Participant and sponsored Subscriber have executed the necessary agreements with Nasdaq or its affiliate, and the NASD member Participant assumes the responsibilities set forth in paragraph (a) of this Rule 5012 with respect to any activity conducted by the sponsored Subscriber.

(c) The Application may be made available through Nasdaq-provided network(s) via:

(1) Primex Auction System Workstation Service;

(2) An Application Programming Interface (''API''); or

(3) A FIX protocol interface. Certain functionality of the Application also may be made available via Computer to Computer Interface (CTCI).

5013. Order Acceptance and Exposure

(a) Order Types

The Application shall accept the following types of orders in Primex Eligible Securities, subject to any conditions or match parameters attached thereto to the extent permitted by the Application and Rule 5014, and other rules applicable to Participants with respect to the entry of orders. Conditions and match parameters, to the extent attached to an order, are never communicated to any Participant:

(1) Market Orders;

(2) Fixed Price Orders, when the specified price is equal to or between the best bid or offer publicly displayed, or is a buy (sell) order priced higher (lower) than the best offer (bid) publicly displayed. Fixed Price Orders to buy (sell) priced below (above) the best bid (offer) publicly displayed will be rejected.

For example: if the best bid and offer publicly displayed in Nasdaq is $20—$20.10, then the Application will accept orders to buy priced at $20.00 and higher, including orders to buy priced higher than the offer of $20.10 (although no execution can take place outside of the NBBO prevailing at the time of execution). An order submitted to buy at $19.95, however, would not be accepted by the Application in this situation and will be returned to the Participant that entered it.

(b) Order Size

The Application will accept orders that are either round lots, or mixed lots. Odd lot orders will not be accepted.

(c) Exposure Times Available

(1) The Application allows Participants to expose orders to the Primex Crowd. Only the size associated with an order is communicated to the Crowd, and only for the time during which the order is available for execution. Crowd Participants may monitor the availability of orders exposed in an auction through the use of their Watch List.

(2) For each Market Order submitted to the Application, a Participant can specify a maximum exposure time of either 0 (i.e., immediate), 15, or 30 seconds. Participants that are Primex Auction Market Makers for a security may submit Market Orders in that security for an immediate (i.e. ''zero second'') Auction, provided the Participant attaches certain match parameters as set forth in Rule 5014(b). Market Orders for at least 10,000 shares or $200,000 in market value are also eligible for a zero second Auction, regardless of whether or not match parameters are attached.

(3) Fixed Price Orders that are accepted by the Application can only be exposed for an immediate execution, in whole or in part).

5014. Conditions and Match Parameters

(a) For All Participants

Subject to any other rules applicable to Crowd Participants and Primex Auction Market Makers with respect to the entry of orders, any Participant may enter an order with the following condition attached:

Minimum Relative Price Improvement

Market Orders may be submitted with a condition for Minimum Relative Price Improvement. The Minimum Relative Price Improvement established for an order is the minimum amount of price improvement superior to the best bid or offer publicly displayed (as applicable) that the order must receive before it may be executed against in whole or in part by any interest from the Crowd. This condition must be attached before the order is entered into the Application. Such condition may be expressed only in terms relative to the best bid or offer on the opposite side of the market existing at such time when any Indication, Response, or other order is or becomes available to interact with the order in an Auction, as permitted by the Application and this Rule Series. Neither the existence nor amount of any Minimum Relative Price Improvement condition is displayed, exposed or communicated to any Participant when attached to an order. This condition shall not be available for orders submitted solely for the proprietary account of a Nasdaq market maker or CQS market maker (including Primex Auction Market Makers) and not involving a customer order.

For example: an order to buy 500 shares entered into the Application may contain a condition for Minimum Relative Price Improvement requiring that any Indication or Response (or sell order exposed in an Auction and which is available for a match) provide to that order at least a certain amount (e.g., 3 cents) of price improvement superior to the best offer publicly displayed at such time the Indication, Response or sell order is available to be matched with the order to buy.

(b) For Primex Auction Market Makers Only

A Participant registered as a Primex Auction Market Maker for a particular security is entitled, but not required, to enter customer orders with any of the following match parameters as discussed below. These allow the Primex Auction Market Maker to provide liquidity in addition to that which may be provided by the Crowd. The match parameters contained in this paragraph are only available to Participants who are Primex Auction Market Makers, and only for those securities for which they are so registered. Neither the existence nor type of any match parameter associated with an order is displayed, exposed or communicated to any other Participant:

(1) Two Cent Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with the Two Cent Match parameter.

(A) If there is interest from the Crowd that can satisfy the order, the order entered with the Two Cent Match will be executed against such interest by the Crowd during its exposure, provided that such Crowd interest offers to provide price improvement greater than two cents superior to the best quote publicly displayed in the NBBO at the time such Crowd interest is available.

Note: Because the system will never execute an order at a price outside of the NBBO, any Crowd interest offering an amount of price improvement that would potentially be outside of the NBBO will be executed, if matched with an order, at a price bounded by the NBBO, in effect adjusting the execution price to allow for the maximum amount of price improvement within that NBBO without trading through the NBBO at that time. As a result, it is possible that an order subject to the Two Cent Match parameter may be matched with interest from the Crowd, and not the Primex Auction Market Maker that entered it, notwithstanding the fact that the actual execution price results in price improvement of two cents or less. This can happen, for example, where there is Crowd interest available that is offering three cents of relative price improvement, but the Application causes the actual execution price to be equal to two cents of price improvement, due to a prevailing NBBO spread of two cents at the time of execution.

(B) If there is interest from the Crowd that can satisfy the order but such Crowd interest would only offer price improvement of two cents or less in relation to the best quote publicly available, then this will immediately cause the Application to execute the entire order against the Primex Auction Market Maker that entered it, and not against such Crowd interest, thereby allowing the execution of that order to be retained by the Primex Auction Market Maker. In this situation, the entire order will be executed with that Primex Auction Market Maker at the best price the Crowd interest would have otherwise provided, regardless of the size associated with such Crowd interest.

(C) Any unexecuted balance of the order remaining at the end of its exposure will be executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed in the NBBO.

(D) A Primex Auction Market Maker may enter customer orders of any size with the Two Cent Match parameter.

(E) A Primex Auction Market Maker that enters a Market Order with the Two Cent Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for

that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction.

(2) 50% Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a 50% Match parameter.

(A) Orders entered with the 50% Match parameter will be executed against any interest by the Crowd that satisfies the order during its exposure at the price(s) and size of such Crowd interest, for no more than 50% of the order. Any execution with the Crowd will immediately cause the Application to provide the order with an additional execution of like size and price against the Primex Auction Market Maker that entered the order.

(B) Any unexecuted balance of the order remaining at the end of its exposure will be automatically executed against the Primex Auction Market Maker. With respect to Market Orders, this execution price will be at the best quote then publicly displayed. With respect to Fixed Price Orders, the execution price will be at the price specified in the Fixed Price Order, unless such price is outside the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

(C) A Primex Auction Market Maker may enter customer orders of any size with the 50% Match parameter.

(D) A Primex Auction Market Maker that enters a Market Order with the 50% Match parameter may elect immediate (''zero seconds''), 15 or 30 second maximum exposure duration for that order. A Fixed Price Order can be exposed only for an immediate ''zero second'' auction.

For example: The best bid and offer publicly displayed for a security is $20– 20.10. A Primex Auction Market Maker for that security enters into the Application a Market Order to buy 2,000 shares for a customer and selects the 50% Match Parameter. The Participant selects an exposure time of 30 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (which could be in the form of Indications, Responses, or contra-side orders to sell): 500 at $20.04, and 200 at $20.05. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 500 and 200 shares, at $20.04 and $20.05, respectively, against the Primex Auction Market Maker entering the order. If there is no other interest from the Crowd at the end of the 30 second exposure period, the Application will cause the remaining balance of 600 shares to be automatically executed against the Primex Auction Market Maker entering the order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Primex Auction Market Maker selling the balance of 600 shares to the customer at $20.10.

(3) Block Facilitation Match

A Participant registered as a Primex Auction Market Maker for a particular security may enter an order with a Block Facilitation match parameter, provided the order is for at least 10,000 shares. The Primex Auction Market Maker may elect to expose the order in an Auction for a maximum of 0, 15, or 30 seconds. Any Crowd interest that executes against the order during the selected exposure period, up to a maximum of 50% of the order size, will be immediately matched with an execution of like size and price against the entering Participant until the order is fully executed. If any unexecuted portion remains at the end of the exposure period, it will be automatically executed against the entering Participant. With respect to Market Orders, the execution price will be the then existing best offer (for orders to buy) or best bid (for orders to sell) publicly displayed. With respect to a Fixed Price Order, the execution price will be the price specified in the Fixed Price Order, unless such price is outside of the best quote publicly displayed, in which case the execution price will be at the best quote publicly displayed.

For example: The best bid and offer publicly displayed is $20– 20.10. A Participant enters into the Application an order to buy a block of 10,000 shares for a customer and selects the Block Facilitation Match Parameter. The Participant selects an exposure time of 15 seconds. During its exposure, the order elicits the following executions by other Crowd Participants (in the form of Indications, Responses, or contra-side orders to sell): 1000 at $20.05, and 2000 at $20.07. The Application will execute these transactions, and immediately match each one as they occur by executing an additional 1000 and 2000 shares, at $20.05 and $20.07, respectively, against the Participant entering the block order. If there is no other interest from the Crowd at the end of the 15 second exposure period, the Application will cause the remaining balance of 4000 shares to be automatically executed against the Participant entering the block order at the best offer publicly displayed at that time. Assuming the best offer publicly displayed is still $20.10 at this time, this would result in the Participant selling the balance of 4000 shares to the customer at $20.10.

(4) Clean Cross

A Participant registered as a Primex Auction Market Maker for a particular security may enter a Clean Cross order for the accounts of two separate customers where the order represents both sides of a cross for at least 10,000 shares to be exposed to the Crowd in an immediate, zero second Auction. The two sides will be executed against each other at the midpoint of the best bid and offer publicly displayed unless superior-priced interest within the Application breaks up one or both sides of the cross. In order to break up a side of the cross, there must be Crowd contra-side interest resident within the Application (e.g., resident PRIs) that totals at least 10,000 shares in the aggregate at a price or prices that are all superior to the bid-ask midpoint by at least the nearest whole cent. Any portion of a side that is not executed against either the opposite side of the Clean Cross order or contra-side interest resident within the Application will be returned unexecuted.

5015. Public and Professional Orders

All orders submitted to the Application shall be identified as either a Public Order or a Professional Order, as those terms are defined in Rule 5011. This Public or Professional status is not displayed, exposed or communicated to any other Participant in the Application, but is used to determine whether an order is available to interact with the Response or Indication of a Crowd Participant. As indicated in Rule 5018(e), a Participant that responds to orders in an Auction can choose whether its Responses and Indications interact with all orders (both Public and Professional Orders) or just Public Orders. When entering an order, however, a Participant entering an order does not have the ability to select or control whether Public or Professional interest may interact with the order.

5016. Option to Route Orders Outside of the System After Exposure in the Application

(a) All Market Orders submitted to the Application shall include an identifier as to whether any unexecuted balance, after the order is exposed to the Crowd, should be forwarded to SuperSoes[SM], in the case of a Nasdaq security, or to ITS/CAES, in the case of an exchange-listed security, or whether the order should be returned to the entering Participant. This option to route orders outside of the Application is available for Market

Orders only. Orders submitted to the Application with a specified, fixed price cannot be automatically forwarded to Nasdaq's other execution systems. Routing identifiers are not displayed, exposed or communicated to any other Participant in the Application.

(b) With respect to exchange-listed securities, only Primex Auction Market Makers (which also must be ITS/CAES market makers with respect to these securities, as required by these rules) may elect to have Market Orders in exchange-listed securities routed out to ITS when there is a balance remaining following exposure in the System, provided, however, that customer orders so routed must first be exposed in the Application for at least 15 seconds. In addition, to the extent the best price publicly quoted at that time is available within Nasdaq's CAES system, regardless of whether the same price also is being publicly quoted by another ITS market center, such orders designated for routing to ITS/CAES will be delivered to CAES for execution up to the size publicly quoted by CAES participants and will not be routed out to another market center through ITS.

5017. Short Sales

Participants are responsible for complying with applicable short sale rules when using the Application. No Participant shall submit to the Application an order for a security that, if executed, would result in a ''short sale'' as that term is defined in Exchange Act Rule 3b–3, unless the transaction would be exempt from, or otherwise permissible under, the requirements of NASD Rule 3350 or Exchange Act Rule 10a–1, as applicable.

5018. Responses and Indications

(a) General—Participants may submit Responses and Indications to the Application, consistent with this Rule Series, for the purpose of interacting with orders in an Auction, as described herein. Responses and Indications are not displayed, exposed or communicated to any Participant, except to the extent they result in an execution with an order. Responses and Indications cannot execute against other Responses or Indications.

(b) Responses—Responses are instructions submitted to the Application by Participants to interact with available orders exposed in an Auction. Responses may be either a Fixed Price Response (e.g. buy 1000 at $20) or a Relative Priced Response (e.g., buy 1000 at the bid plus 3 cents). All Responses must be entered in an amount of at least one round lot, but also may be for a mixed lot.

(c) Indications—Indications are instructions, with the characteristics set forth below, submitted to the Application by Participants to interact with orders exposed in an Auction. An Indication may be a Predefined Relative Indication (''PRI'') or a Go-Along Indication.

(1) Predefined Relative Indications

(A) PRIs can be submitted to the Application for the purpose of automatically responding to an Auction at a point in time when one or more orders becomes available. PRIs have no specific, fixed price, but are expressed at time of entry in terms relative to the best bid or offer publicly displayed at such time when the Application activates the PRI against orders in an Auction. While resident within the Application, PRIs are ranked in relative price/time priority among all other PRIs resident within the Application and any same-side orders currently being exposed in an Auction, as indicated in paragraph (e) of this Rule. Neither the existence nor terms of a PRI are displayed, exposed or communicated to any other Participant while resident in the Application. When activated by the Application, a PRI will match against orders in an Auction at a price equal to the best bid (for PRIs to buy) or offer (for PRIs to sell) publicly displayed at that time in the NBBO, plus or minus (respectively) the relative price term associated with that PRI; provided that such price also satisfies any applicable condition associated with the order(s) in the Auction to which it is responding.

(B) At the time of its original entry, each PRI submitted to the Application must be for the following share amounts:

(i)NBBO PRIs must be for at least 3000 shares upon entry;

(ii) NBBO +/−.01or .02 must be for at least 2000 shares upon entry;

(iii) NBBO +/−.03 or greater must be for at least 1000 shares upon entry.

(C) The Application will accept a PRI with the following amounts of relative price improvement:

(i) if the NBBO, at the time the PRI is submitted, has a spread equal to three cents or more, the PRI will be accepted if it offers any amount of price improvement between zero and the actual NBBO spread prevailing at that time;

(ii) if the NBBO, at the time the PRI is submitted, has a spread that is less than three cents, the PRI may offer any amount of price improvement between zero and three cents.

(D) Participants may elect to limit their exposure when using PRIs by entering a Per Auction Maximum size for each PRI submitted. The Per Auction Maximum represents the maximum share amount of a PRI available for a single Auction. It cannot be greater than the size of the PRI, but is subject to the same minimum values applicable to the original entry of a PRI with that relative price term. Once the Per Auction Maximum, if any, for a PRI is exhausted, the Participant will have 15 seconds to withdraw the PRI, during which time no further executions against that PRI will occur. In the absence of a withdrawal during this period, the Application will restore the PRI up to the Per Auction Maximum and the PRI will become available again for any subsequent Auctions to the extent there is an eligible balance remaining for that PRI. For purposes of relative price/time priority, the restored PRI will receive a new timestamp within the Application.

(E) Participants may select a maximum residency period of one (1) or five (5) days, during which time the PRI remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any PRIs that remain at the end of the applicable residency period.

(2) Go-Along Indications

(A) A Go-Along Indication can be submitted to the Application for the purpose of automatically responding in an Auction at a point in time when one or more orders becomes available in an Auction and there has been at least one other contemporaneous Crowd execution within the Application at the NBBO; provided there are no PRIs available or orders being exposed in an Auction (executions resulting from a Primex Auction Market Maker Guarantee do not trigger Go-Along Indications). Go-Along Indications have no specific, fixed price when entered, but will match against orders at a price equal to the best bid (for Go-Along Indications to buy) or best offer (for Go-Along Indications to sell) that exists at such time the Go-Along Indication is activated. While resident within the Application, Go-Along Indications are not displayed, exposed or communicated to any other Participant.

(B) At the time of its original entry, each Go-Along Indication submitted to the Application must be for at least 10,000 shares.

(C) Participants may select a maximum residency period of one (1) or five (5) days, during which time the Go-Along Indication remains resident within the Application unless fully executed or withdrawn. The Application will automatically withdraw any Go-Along Indications that

remain at the end of the applicable residency period.

(d) Executions Bounded by the NBBO—The Application will never execute an order outside of the NBBO prevailing at the time of execution. Indications such as PRIs that potentially would offer an amount of price improvement that could result in an execution outside of the NBBO will be priced at the NBBO if matched with an order, in effect providing the maximum amount of price improvement permissible within the NBBO at that time.

(e) Relative Priority of Predefined Relative Indications and Orders—(1) While resident within the Application, Predefined Relative Indications are ranked in relative price/time priority while they await activation against incoming orders notwithstanding that PRIs have no specified, fixed price associated with them. For example, among resident PRIs for the same security on the same side of the market, PRIs offering greater relative price improvement are ranked ahead of PRIs offering less relative price improvement. PRIs offering the same relative amount of price improvement are ranked by time of entry (or the time the Indication was restored after exhausting its Per Auction Maximum).

(2) Market Orders being exposed within the Application also are ranked in relative price/time priority during the life of their exposure, notwithstanding that Market Orders have no specified, fixed price associated with them. For example, among Market Orders in the same security being exposed on the same side of the market, those orders not seeking any relative price improvement are ranked ahead of orders seeking some relative amount of Minimum Relative Price Improvement. Orders seeking a greater relative amount of Minimum Relative Price Improvement are ranked behind orders seeking a lesser relative amount of Minimum Relative Price Improvement. Orders seeking the same relative amount of price improvement are ranked by time of entry.

(3) Among and between Indications and orders on the same side of the market, the relative price/time priorities for each are integrated, based on their respective ranking relative to the best bid and offer publicly displayed. The Application recalculates and maintains these relative priorities whenever there is a change in the best bid or offer prices publicly displayed in the NBBO. Market Orders that are matched with other Market Orders being auctioned are executed at the midpoint of the best bid and offer publicly displayed, provided that such price satisfies any condition for Minimum Relative Price Improvement associated with each order.

(f) Responding to All Orders or Public Orders Only—All Responses and Indications shall include an identifier as to whether it may interact with either: (1) All available orders (both Public Orders and Professional Orders); or (2) Public Orders only. Such identifier is not displayed, exposed or communicated to any Participant at any time, but is used by the Application for determining the universe of orders with which the Response or Indication may interact.

5019. Crowd Participation

(a) There are two levels of participation in the Application: Crowd Participant and Primex Auction Market Maker. Becoming a Participant in the Application automatically entitles the Participant to be a Crowd Participant for any security, allowing participation consistent with this Rule 5019. A Crowd Participant may also choose to register as a Primex Auction Market Maker, but only on a security-by-security basis, as set forth in Rule 5020, and only consistent with the requirements for participation under that Rule.

(b) Unless otherwise specified, a Crowd Participant may enter orders, Indications, and Responses in any Primex Eligible Security at any time, for its own account or for the account of a customer. Crowd Participants have no mandatory obligation to submit to the Application any order at any time.

5020. Market Maker Participation

(a) A Participant may register as a Primex Auction Market Maker in one or more Primex Eligible Securities, and may maintain such registration while in compliance with the requirements of this Rule. Unless otherwise specified, a Primex Auction Market Maker is automatically subject to the same rights and obligations of Crowd Participants pursuant to Rule 5019 with respect to customer orders in any and all Primex Eligible Securities. In addition, a Primex Auction Market Maker is entitled, but not obligated, to use either of the following features of the Application when submitting customer orders, but only with respect to those securities in which it is currently registered as a Primex Auction Market Maker:

(1) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with any of the available match parameters that enable the Primex Auction Market Maker to exercise certain matching rights facilitated by the Application, as set forth in Rule 5014(b). When associated with an order, these match parameters are not displayed, exposed or communicated to any other Participant; or

(2) A Primex Auction Market Maker, for securities in which it is registered as such, may submit customer orders to the Application with a Market Maker Guarantee enabling the Primex Auction Market Maker to guarantee an execution within the Application where such orders are not otherwise subject to an execution as a result of either satisfactory Crowd interest or matching rights processing elected by the Primex Auction Market Maker pursuant to Rule 5014(b) for the order.

(i) Public customer orders of any size are eligible for the Market Maker Guarantee. The Application will facilitate the Market Maker Guarantee by automatically executing any unexecuted balance of the order against the Primex Auction Market Maker that submits the order, after the Auction exposure period for the order has expired.

(ii) The Market Maker Guarantee is automatically provided at a price equal to the best publicly quoted offer price (for orders to buy) or best publicly quoted bid price (for orders to sell) existing for the security at the time when such exposure period for the order has expired (including ''zero second'' auctions), for any amount of shares established by the Primex Auction Market Maker for the order.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) If the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) If the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350;

(3) Submit to the Application a minimum of 80%* of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

(A) Any customer order that is greater than 1099 shares at origination, except that nothing in these rules prohibits a Participant from submitting orders of greater size at any time;

(B) Any customer order that, when initially received by the Participant, is a Fixed Price Order with a specified price that is not eligible for acceptance by the Application because it is priced outside the NBBO and is not otherwise marketable pursuant to Rule 5013(a)(2), regardless of whether or not the order becomes eligible for acceptance and exposure at a subsequent point in time;

(C) Any customer order placed by a customer who authorizes the Participant to not expose the order, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders;

(D) Any customer order that is an odd lot order (*e.g.*, less than 100 shares);

(E) Any customer order to be executed outside of the hours of operation of the Application; or

(F) Any other order that would not fall within the definition of the term ''covered order'' as defined in Exchange Act Rule 11Ac1–5(a)(8).

(4) Not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

5021. Anonymity, Execution, Reporting, and Clearing

(a) Anonymity—The Application will process all activity among Participants on an anonymous basis until the end of the day. After facilitating an execution, the Application will send an execution report to all Participants involved as soon as practicable. The execution report will indicate the details of the transaction, but will not contain the identity of the contra-party. At the end of each trading day, the actual contra-party for executions obtained within the Application will be made available to the Participants involved through Nasdaq's systems. For regulatory and other necessary purposes, the NASD and Nasdaq will have the ability to determine the identity of the actual contra-parties at any time.

(b) Tape Reporting and Clearing—Matches within the Application are executed and reported through Nasdaq systems for public tape reporting and forwarding to NSCC for clearing, where necessary. Participants (or their clearing brokers) are the parties responsible for the clearance and settlement of all trades executed through the Application. Once a transaction is executed, Participants do not have the ability within the Application to modify or reallocate any portion of the execution to a clearing broker other than the clearing broker that the Application associates with the Participant at the time of execution. Neither the NASD (and its affiliates) nor any operator or administrator of the Primex Auction System shall be directly or indirectly a party to any transaction entered into, matched, or otherwise effected through the Application, notwithstanding that, for the remainder of the trading day after a transaction, the actual contra-parties have not had their identities disclosed to each other by the Application.

5022. Credit Limits and Clearing Limits

(a) Credit Limits—The Application shall allow a Participant's Firm Administrator to establish Credit Limits for each of its associated Subscribers, including sponsored Subscribers, on an individual Subscriber basis. The limits are established as a dollar amount of aggregated purchases or sales which, when reached, causes the Application to: (1) Inhibit any future executions or the entry of future interest for that Subscriber; (2) cancel any orders and withdraw any Indications resident within the Application for that Subscriber; and (3) send a notice to that Subscriber, its Firm Administrator, and the Nasdaq Supervisor. Credit Limits may be monitored and modified by the Firm Administrator on a real-time basis directly through the Application.

(b) Clearing Limits—The Application shall allow a Participant's clearing broker to establish Clearing Limits within the Application for the Participant on a firm-wide basis. The limits are established as a dollar amount of both purchases and sales (calculated separately, and not netted) of all Subscribers, collectively for a Participant, effected within the Application through or in the name of that Participant. When the Clearing Limits for a Participant are reached, the Application will: (1) Inhibit any future executions for all Subscribers associated with that Participant; (2) cancel any orders and withdraw any Indications resident within the Application for all Subscribers associated with that Participant; and (3) send a notice to that Participant's Firm Administrator, the Nasdaq Supervisor, and to the clearing broker for that Participant provided that the clearing broker also is a Participant. Clearing Limits for a Participant may be monitored on a real-time basis by the Participant's Firm Administrator and can be established, monitored, and modified by the Firm Administrator of the Participant's clearing broker, provided the clearing broker also is a Participant. If the clearing broker is not a Participant in the Application, then the Nasdaq Supervisor will notify the clearing broker that the Clearing Limits have been reached as soon as practicable. Clearing Limits also can be established and modified by the Nasdaq Supervisor on behalf of the clearing broker.

5023. Hours of Operation

(a) The Application is available for executing securities transactions during regular Nasdaq trading hours whenever there is a free and open quote (*i.e.*, not locked or crossed), subject to the general authority and regulatory responsibilities of Nasdaq or its affiliates in operating the Application as a facility of Nasdaq or its affiliate (including but not limited

* The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; and July 1, 2002; any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on October 1, 2002, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until December 31, 2002 only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on July 1, 2002 (or during such portion of the calendar quarter that commences on July 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on October 1, 2002 may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on January 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80% of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

to its authority to implement trading halts in one or more securities due to regulatory reasons, market-wide emergencies, and system malfunctions).

(b) Nasdaq may permit certain functionality of the Application to be available outside of the time period during which securities transactions may be effected through the Application, including but not limited to, the monitoring, entering, canceling, withdrawing, or modifying resident Indications, Credit Limits, or Clearing Limits.

5024. Limitation of Liability

(a) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System shall have any liability for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from: (1) the Nasdaq Application; or (2) the collection, processing, reporting or dissemination of any information derived from the Nasdaq Application, resulting either from any act or omission by Nasdaq or any affiliate, or any operator, licensor, or administrator of the Nasdaq Application or from any act, condition or cause beyond the reasonable control of Nasdaq or any affiliate, operator, licensor or administrator of the Nasdaq Application, including, but not limited to, flood, extraordinary weather conditions, earthquake or other act of nature, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction. If a Participant that enters, authorizes its Subscribers (including sponsored Subscribers) to enter, or is authorized by other Participants to enter orders, Responses, or Indications that result in a transaction through the Application fails to perform its settlement or other obligations under the terms of such transaction, the NASD (and its affiliates) and Primex Trading N.A., L.L.C. (and its affiliates) shall have no liability for such failure to settle.

(b) Neither Nasdaq, the NASD (including their affiliates), Primex Trading N.A., L.L.C. (including its affiliates) nor any other operator, licensor, or administrator (including their affiliates) of the Nasdaq Application of the Primex Auction System makes any express or implied warranties or conditions to Participants or their associated Subscribers (including sponsored Subscribers) as to results that any person or party may obtain from the Nasdaq Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Nasdaq Application are hereby disclaimed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for 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. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System, as defined in paragraph (c)(2) of Rule 19b–5 of the Act.[6] As such, Nasdaq was not required to file a proposed rule change under Rule 19b–4 of the Act[7] as long as the System maintained its status as a Pilot Trading System. Under paragraph (c)(2) of Rule 19b–5 of the Act, a system must comply with three criteria to maintain its status as a Pilot Trading System.[8] One such criteria is that, for each security traded in the System, the System cannot trade more than one percent of the average daily consolidated trading volume of any such security, during at least two of the last four consecutive calendar months. Nasdaq represents that Primex has exceeded this threshold for many securities. Nasdaq also represents that while not all eligible securities have been phased in as of this date, Primex has already executed approximately 1.7 million trades representing almost 500 million shares since it began operation just over four months ago. Therefore, Nasdaq files this proposed rule change to continue operating the System until the Commission grants permanent approval.

Generally, Nasdaq states that Primex is a hybrid system that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment.[9] In a traditional auction market model, market participants gather in a ''crowd'' at a physical location to bid for incoming orders. In addition, most auction markets employ a single specialist that manages trading in a security and supplies liquidity when there is no buying or selling interest in the crowd.

Primex automates many of these elements. By facilitating an ''electronic crowd,'' not bound by the physical limitations of space or the number of persons that can be at any one place at a given time, the System can provide the benefits of an auction model on a larger and more efficient scale. By further combining this within a competitive, multi-dealer structure that has been Nasdaq's hallmark, Nasdaq believes it can make available a greater amount of liquidity than would be available in a market with only one provider of capital. The result of this combination and automation, Nasdaq believes, is a market-based solution for providing price improvement opportunities and enhanced liquidity.

The following is a brief overview of how the System typically will operate. Additional details on the System and its tools can be found within the rules of the System, the Form PILOT[10] and the proposing release seeking permanent approval of the System.[11]

A customer sends an order to his or her broker, who, in turn, can forward it to the System. The System is voluntary. Once an order is submitted, an auction for that order commences. Through a unique mechanism, the order is exposed to the System's electronic crowd, which can be composed of market makers, proprietary traders, institutions, ECNs and even the orders of other customers. The System's electronic crowd is open to any NASD member (or their customers, through a sponsored arrangement), and thus the universe of participants who may have access to

[6] 17 CFR 240.19b–5(c)(2).

[7] 17 CFR 240.19b–4.

[8] Pursuant to Rule 19b–5(c)(2) of the Act, to qualify as a Pilot Trading System, a system must: (1) be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than 20 percent of the average daily trading volume of all trading systems operated by the self-regulatory organization. 17 CFR 240.19b–5(c)(2).

[9] A detailed description of the System is contained in the Form PILOT and the companion proposed rule change, as well as the rules.

[10] *See supra* note 3.

[11] *See supra* note 5.

these orders is very broad. Using the System's auction response tools, crowd participants anonymously bid for the order at prices at or within the parameters of the National Best Bid and Offer (''NBBO''). The order will be executed if an appropriate match is found in the electronic crowd or if the participant submitting the order provided an execution guarantee. The types of orders that can be submitted and the System's response tools are specified in the above rules and are generally described below.

Primex is available to any NASD member and other entities members choose to sponsor. To access the System, a member must be in good standing and have executed the necessary agreements with Nasdaq. Members granted access to the System are referred to as Primex Auction System Participants (''Participants''), and can access the facility for their customers or for themselves. Participants in the System are classified as either Primex Auction Market Makers (''PAMMs'') or Crowd Participants.

The rights and obligations of each class of Participant are specified in the rules. Generally, however, for any security eligible for trading in the System, Crowd Participants can: view all orders exposed in the System; interact with any order put to auction in the System by responding to auctions; submit orders to be put to auction; and trade as principal, agent, or riskless principal.

PAMMs have certain obligations when they participate in the System. With respect to any security eligible for trading in the System for which a Participant is registered as a PAMM, it must: maintain a two-sided quote in Nasdaq (or Nasdaq's InterMarket for CQS securities) with respect to any security for which it is registered as a PAMM, and otherwise be in compliance with all applicable NASD rules; and submit to the System a minimum percentage [12] of its Mandatory Eligible [13] public customer orders (including customer orders of another broker-dealer that directs such orders to the PAMM) for those securities in which it is registered as a PAMM.

PAMMs have the same privileges as Crowd Participants, but because they have certain obligations, PAMMs also have additional privileges. PAMMs are entitled but not obligated to: exercise certain ''matching rights'' that allow a PAMM to commit capital to its customer orders in conjunction with the auction exposure process; provide execution guarantees within the System for its own customer orders submitted; and use certain types of orders that permit the PAMM to facilitate block trades and ''clean crosses.'' PAMMs also are entitled to share in transaction revenue paid by other Participants when those other Participants execute against a PAMM's customer orders.

The System accepts unpriced market orders, as well as orders that have specified, fixed prices that are marketable or priced between the NBBO. Orders can be submitted in any round lot or mixed lot, but odd lot orders are not accepted. The System is not an ECN Display Alternative under the Order Handling Rules [14] because it does not display limit orders. Fixed price orders are eligible only for ''immediate or cancel'' treatment, whereas Participants can choose the duration for which their market orders will be exposed.

Participants also have the option to specify that the balance of an unexecuted order be returned to them or forwarded to other Nasdaq systems for execution. Participants must indicate their preference upon submission of an order to the System. A Participant's preference is not displayed, exposed or communicated to any other Participant.

Another feature of the System is that it processes all activity among Participants on an anonymous basis until the end of the trading day, at which time the counterparties' identities are revealed to each other. Nasdaq, however, has the ability to determine the identity of the parties at any time.

In all other aspects, trades executed within the System are reported and settled using ACT, just as any other trade executed using Nasdaq systems. Trades are reported to the public tape, included in ACT's risk management features, and forwarded to DTCC for clearing, if necessary. The System itself provides additional risk management controls through which Participants and their clearing firms can closely monitor and control their exposure specifically with respect to System activity, both at an individual subscriber/user level, as well as across an entire firm.

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) [15] and 11A(a)(1) of the Act.[16] Section 15A(b)(6) of the Act [17] requires the rules of the NASD to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1) of the Act [18] sets forth finding of Congress that new data processing and communications techniques create opportunity for more efficient and effective market operations.

Nasdaq believes its application of Primex is consistent with the NASD's obligations under the Act, as well as the finding of Congress, because the System provides members with an additional electronic, execution system, which is designed to provide members with flexibility in executing orders and the opportunity to obtain price improvement. Nasdaq states that the System is a hybrid that combines an extended, electronic auction mechanism with the speed and liquidity of Nasdaq's competing market maker environment. Nasdaq believes that the System can improve on the traditional auction market model by automating many of its elements, including the trading crowd, but will not be bound by physical limitations of space or the number of persons that can be in one physical location at any given time. Nasdaq believes this attribute, combined with a multiple market maker structure, provides an opportunity for enhanced liquidity.

Nasadq states that another attribute of the System is that all orders may be exposed to a wider audience and thus have the opportunity to obtain price improvement. This provides for order interaction and can facilitate best execution. At the same time, however, Nasdaq believes the System can continue to provide PAMMs with incentives to expose orders and provide liquidity to those orders. To ensure the protection of investors, orders will not be executed at prices inferior to the NBBO.

[12] *See* NASD Rule 5020.

[13] *See* NASD Rules 5011 and 5020.

[14] The SEC's Quote Rule, Rule 11Ac1–1, and Limit Order Display Rule, Rule 11Ac1–4, together are commonly referred to as the Order Handling Rules. Specifically, the System is not an ECN Display Alternative under paragraph (c)(5)(ii) of Rule 11Ac1–1 and paragraph (c)(5) of Rule 11Ac1–5.

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78k–1(a)(1).

Nasdaq further states that the System also is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions is securities. Trades executed using the System will be processed through ACT in the same manner as trades executed using other Nasdaq systems. As such, information on these trades will be incorporated in Nasdaq's audit trail, ACT's risk management function, and forwarded to DTCC for clearance and settlement, if necessary. Trades executed using the System also will be disseminated on the public tape.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Prior to filing the Form PILOT, Nasdaq published a Notice to Members describing the operation of the System.[19] One letter was received in response thereto.[20]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii),[21] subparagraph (f)(5) of Rule 19b–4,[22] and subparagraph (f)(2) of Rule 19b–5.[23] The proposal would permit Nasdaq to continue operating Primex until the Commission grants permanent approval, but not for a period longer than six months. The proposal does not modify any rule or the operation of Primex. As such, it does not affect the protection of investors or the public interest; does not impose any burden on competition; and does not have the effect of limiting access to or availability of the system.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,[24] 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 such filings will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR–NASD–2002–58 and should be submitted by June 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13625 Filed 5–30–02; 8:45 am]

BILLING CODE 8010–01–P

[19] NASD Notice to Members 00–65 (September 2000).

[20] *See* letter from Antonio Cecin, Managing Director, Director of Equity Trading, US Bancorp Piper Jaffray, to Eugene Lopez, Senior Vice President, Nasdaq, dated January 2, 2001.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(5).

[23] 17 CFR 240.19b–5(f)(2).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45981; File No. SR–PCX–2002–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Bid-Ask Spread Differentials for Options

May 23, 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 April 22, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCX. On May 3, 2002, the PCX filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend Exchange Rule 6.37 to increase the maximum bid/ask spread differential for options from $.75 to $.80 where the bid price of an option is greater than $10 but does not exceed $20. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

* * * * *

Rule 6.37

* * * * *

(b)(1) Bidding and/or offering so as to create differences of no more than

(A)–(C)—No change.

(D) no more than *.80* [.75] where the bid is more than $10 but does not exceed $20, and

(E) No change.

(2)–(4)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX 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 PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, dated May 2, 2002 (''Amendment No. 1''). The proposed rule change was originally submitted pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder. The Exchange filed Amendment No. 1 to designate the filing as having been filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Exchange also requested the Commission to waive the 5-day pre-filing requirement and the 30-day delayed operative period.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the industry-wide conversion of pricing from fractions to decimals, the Exchange converted all options prices in its rules to decimals, *i.e.*, dollars and cents. Among the rules affected by the conversion of prices was PCX Rule 6.37, which relates to obligations of market makers. This rule stated that in the course of maintaining fair and orderly markets, market makers could set price differentials of ¾ of a point where the bid was more than $10 but does not exceed $20. Upon conversion to decimal pricing, the Exchange converted ¾ of a point price differential to a $.75 price differential.

A related rule regarding trading differentials provides that the maximum price variation (''MPV'') for issues traded at $3.00 or greater is $.10. As a consequence of the conversion, the .10 MPV bars market makers from setting price differentials of 75 cents as exists under the current rules and instead requires them to quote the differentials as either $.70 or $.80. Because the $.70 value provides less of a spread differential than was permitted before the conversion, and because current PCX Rule 6.37 does not permit a spread differential higher than $.75, the Exchange proposes to amend Rule 6.37 to increase the price differential by $.05 so that it may set the price differential to $.80 for issues that trade for over $3.00, but less than $10.00.

2. Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[4] in general, and further the objectives of Section 6(b)(5),[5] in particular, in that it is designed to facilitate transactions in securities, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, 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, as amended, 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,[6] it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder. At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The PCX has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date and waiver of the 5-day pre-filing requirement will permit the PCX to amend Rule 6.37 to reflect the PCX's $.10 MPV without undue delay. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.[9]

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 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 PCX. All submissions should refer to the File No. SR–PCX–2002–22 and should be submitted by June 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13624 Filed 5–30–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] The Exchange requested the Commission to waive 5-day pre-filing notice requirement and the 30-day operative period. *See* Amendment No. 1, *supra* note 3.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4031]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Neo-Impressionism: Artists on the Edge''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Neo-Impressionism: Artists on the Edge,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Portland Museum of Art, Portland, ME from on or about June 27, 2002 to on or about October 20, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice

of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202–619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: May 23, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–13702 Filed 5–30–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4730]

Determination Related to the Participation of the Magen David Adom Society of Israel in the Activities of the International Red Cross and Red Crescent Movement

Pursuant to the requirements contained in the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), under the heading of Migration and Refugee Assistance, I hereby determine that the Magen David Adom Society of Israel is not being denied participation in the activities of the International Red Cross and Red Crescent Movement.

This Determination shall be published in the **Federal Register**, and copies shall be provided to the appropriate committees of the Congress.

Dated: May 5, 2002.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 02–13701 Filed 5–30–02; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the six Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burdens. The **Federal Register** Notices with a 60-day comment period soliciting comments on the following collections of information were published on November 14, 2001 on pages 57149–57150 for (2120–0514) and January 31, 2002 on page 4775 for (2120–0003, 2120–0027, 2120–0507, 2120–0574, 2120–0644).

DATES: Comments must be submitted on or before July 1, 2002. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Malfunction or Defect Report (Other than scheduled air carriers).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0003.

Forms(s): FAA Form 8010–4.

Affected Public: Repair station operators certified under Part 145 and air taxi operators certified under Part 135.

Abstract: The information collection required by FAR 135 and 145 are authorized by U.S. Code, Title 49, Chapter 447, Subsection 44702, as amended, which empowers the Secretary of Transportation to issue certificates for air taxi operators and repair stations, respectively, and to prescribe such terms, conditions, and limitations on those certificates, as necessary to ensure safety in air transportation. Submission of malfunction or defect reports are necessary to ensure that safety.

Estimated Annual Burden Hours: An estimated 8,407 hours annually.

2. Title: Application for Certificate of Waiver or Authorization.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0027.

Forms(s): FAA Form 7711–2.

Affected Public: Airmen, state & local governments, and businesses that wish to apply for authorization to occupy navigable airspace, generating around 25,000 responses.

Abstract: Part A of Subtitle VII of the Revised Title 49, United States Code, authorizes the issuance of regulations governing the use of navigable airspace. 14 CFR parts 91, 101, and 105 prescribe regulations governing the general operation and flight of aircraft, moored balloons, kites, unmanned rockets, unmanned free balloons, and parachute jumping. Applicants are individual airmen, state and local governments, and businesses.

Estimated Annual Burden Hours: An estimated 12,202 hours annually.

3. Title: Special Federal Aviation Regulation (SFAR) 36, Development of Major Repair Data.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0507.

Form(s): FAA form 8100–8.

Affected Public: A total of 19 aircraft maintenance personnel, either already holding authorization to develop major repair data or applying for that authorization.

Abstract: SFAR 36 (to part 121) relieves qualifying applicants (Aircraft maintenance, commercial aviation, aircraft repair stations, air carriers, commercial operators) of the burden to obtain FAA approval of data developed by them for the major repairs on a case-by-case basis; and provides for one-time approvals.

Estimated Annual Burden Hours: An estimated 326 hours annually.

4. Title: War Risk Insurance.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0514.

Form(s): N/A.

Affected Public: A total of 76 estimated claimants for War Risk Insurance.

Abstract: The information submitted by applicants for Chapter 443 insurance is used by the FAA to determine the reasonableness of the terms and conditions on which commercial insurance is available, assess the risks for which insurance coverage is being sought, and determine what risks of aircraft operators' are customarily covered by insurance. Without this information, the FAA could not fulfill the statutory requirements or due diligence for issuance of insurance. Therefore, without this information, the FAA could not issue insurance.

Estimated Annual Burden Hours: An estimated 1,668 hours annually.

5. Title: Aviation Safety Counselor of the Year Award.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0574.

Form(s): FAA Form 8740–14.

Affected Public: A total of 180 private citizens involved in aviation who nominate individuals for the award.

Abstract: The form is used to nominate individuals for recognition of their volunteer service to the FAA. The agency will use the information on the form to select nine regional winners and one national winner.

Estimated Annual Burden Hours: An estimated 180 hours annually.

6. Title: Commercial Space Transportation Licensing Requirements for Operation of a Launch Site.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0644.

Form(s): N/A.

Affected Public: A total of 2 licensees authorized to operate commercial launch sites.

Abstract: The information collected includes data required for performing launch site location analysis. The launch site license is valid for a period of five years.

Estimated Annual Burden Hours: An estimated 1,592 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 17, 2002.

Judith D. Street,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 02–13708 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Little Rock National Airport, Little Rock, Arkansas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the city of Little Rock, acting through the Little Rock Municipal Airport Commission for Little Rock National Airport, under the provisions of Title 49, U.S.C., Chapter 475, (hereinafter referred to as ''Title 49'') and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the Noise Exposure Maps is May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Edward N. Agnew, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137, (817) 222–5630.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Little Rock National Airport are in compliance with applicable requirements of part 150, effective May 13, 2002. Under Title 49, an airport operator may submit to the FAA, Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Little Rock, acting through the Little Rock Municipal Airport Commission submitted to the FAA on May 1, 2002, Noise Exposure Maps, descriptions and other documentation, which were produced during 2001 and 2002. It was requested that the FAA review this material as the Noise Exposure Maps, as described in Title 49.

The FAA has completed its review of the Noise Exposure Maps and related descriptions submitted by the city of Little Rock, acting through the Little Rock Municipal Airport Commission. The specific maps under consideration are Noise Exposure Map: 2000, Exhibit V–1 (page V–2) and Noise Exposure Map: 2006, Exhibit V–2 (page V–5) in the submission. The FAA has determined that these maps for Little Rock National Airport are in compliance with applicable requirements. This determination is effective on May 13, 2002. FAA's determination on an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Title 49, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface, rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the Noise Exposure Maps and the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137; Little Rock National Airport, One Airport Drive, Little Rock, Arkansas 72202–4489.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, May 13, 2002.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 02–13709 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In March 2002, there were eight applications approved. This notice also includes information on one application, approved in February 2002, inadvertently left off the February 2002 notice. Additionally, eight approved amendments to previously approved applications are listed.

SUMMARY: The FAA published a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Mobile Airport Authority, Mobile, Alabama.

Application Number: 02–04–C–00–MOB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,998,879.

Earliest Charge Effective Date: October 1, 2004.

Estimated Charge Expiration Date: February 1, 2008.

Class of Air Carriers Not Required To Collect PFCS: Air taxi/commercial operators filing FAA Form 1800.31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Mobile Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Flight information display system.
Jet bridge.
Escalator.
Public address system.
Baggage belt system.
Roof replacement.
Cooling system upgrade.
Land acquisition.
Install security fence.
Rehabilitate airfield signage.
Passenger loading bridge.
Airfield marking.
Airfield generator.
Interior terminal signs.
Aircraft rescue and firefighting vehicle.
Part 150 noise study update.

Decision Date: February 22, 2002

FOR FURTHER INFORMATION CONTACT: William Schuller, Jackson Airports District Office, (601) 664–9883.

Public Agency: City of San Jose, California.

Application Number: 02–13–C–00–SJC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $142,846,000.

Earliest Charge Effective Date: September 1, 2008.

Estimated Charge Expiration Date: May 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Jose International Airport.

Brief Description of Project Approved for Collection and Use:

Expanded noise attenuation within the 65 CNEL noise contour.

Decision Date: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650)876–2806.

Public Agency: County of Natrona, Casper, Wyoming.

Application Number: 02–05–C–00–CPR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,590,000.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: November 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate aircraft parking apron.
Terminal renovation.
Rehabilitate taxiway C.

Brief Description of Project Approved in Part for Collection and Use:

Acquire snow removal equipment.

Determination: The two pick-up snowplows were determined to be in excess of the eligible equipment in the public agency's snow removal plan and, thus, were not approved.

Decision Date: March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Lawton Metropolitan Airport Authority, Lawton Oklahoma.

Application Number: 02–03–C–00–LAW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $361,000.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: June 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information containd in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lawton-Ft. Sill Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Develop pavement management system.
PFC application and administrative costs.
Install security perimeter fence.
Construct perimeter road.
Upgrade runway markings.
Runway safety area drainage improvements.
Acquire snow removal equipment.
Construct apron.
Acquire land for airport development.

Decision Date: March 20, 2002.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: San Francisco Airport Commission, San Francisco, California.

Application Number: 02–02–C–00–SFO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $224,034,821.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has

determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Francisco International Airport.

Brief Description of Projects Approved for Collection and Use:

Taxiway improvements and realignment, and boarding areas A and G apron construction.
Common use systems (baggage system security screening devices, passenger loading bridges, baggage handling system, gate room podiums and seating).

Decision Date: March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Greater Orlando Aviation Authority, Orlando, Florida.

Application Number: 02–09–C–00–MCO.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $219,494,000.

Earliest Charge Effective Date: February 1, 2014.

Estimated Charge Expiration Date: February 1, 2017.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Landside terminal level 1 modification.
Six bank elevator improvements.
Baggage conveyor system—landside terminal levels 1 and 2.
Central plant improvements, phase 3.
Fourth runway.
Drainage improvements (wildlife attractants mitigation).
Intermodal transit system.
Runway 17/35 pavement joint rehabilitation.
Satellite aircraft rescue and firefighting facility.
800 MHz radio system—digital upgrade.
Baggage sorting system upgrade.
Taxiway lighting improvements.
Mobile command post.
Surface movement guidance control system.
Automated guideway transit program rehabilitation.
Emergency operations center.
Aircraft rescue and firefighting vehicles.

Decision Date: March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Bud Jackman, Orlando Airports District Office, (407) 812–6331, ext. 22.

Public Agency: City of Chicago—Department of Airports, Chicago, Illinois.

Application Number: 02–13–U–00–ORD.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $53,000,000.

Earliest Charge Effective Date: May 1, 2008.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: No change from previous decision.

Brief Description of Project Approved for Use:

Touhy Avenue Reservoir.

Decision Date: March 26, 2002.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: Jackson County, Medford, Oregon.

Application Number: 02–07–C–00–MFR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $816,466.

Earliest Charge Effective Date: June 1, 2003.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Operations by air taxi/commercial operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25-mile radius of the airport and other similar limited, irregular, special service operations by such air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Rogue Valley International—Medford Airport.

Brief Description of Projects Approved for Collection and Use:

Realignment and rehabilitation of taxiway A.
Terminal Area plan (planning study).

Decision Date: March 27, 2002.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Gulfport-Biloxi Regional Airport Authority, Gulfport, Mississippi.

Application Number: 02–05–C–00–GPT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,765,993.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: June 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Land acquisition, runway protection zone, runways 14, 18, and 36.
Blast study.
Clear, grub, and preserve Padgett and Cuevas property.
Upgrade closed circuit television, security improvements for terminal, general aviation, and cargo areas.
Acquire explosives detection dog.
Construct perimeter road—schedule B (north).
Rehabilitation perimeter fence security improvements.
South central cargo area expansion road, utilities, and site work.
Construct south west general aviation area, phase II.
Terminal expansion—baggage claim area, federal inspection service, baggage search area at ticket counters, and security screening.
Conduct pavement condition index update, all taxiways, ramps, and runway 18/30.

Decision Date: March 28, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Jackson Airports District Office, (601) 664–9885.

Amendments to PFC Approvals

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
00–06–C–01–COS, Colorado Springs, CO	01/29/02	$6,764,710	$8,441,519	04/01/03	09/01/03
*99–02–C–01–CID, Cedar Rapids, IA	03/06/02	$4,210,583	$4,210,583	02/01/04	12/01/03
99–03–C–01–LBB, Lubbock, TX	03/15/02	$4,527,023	$4,275,774	08/01/02	09/01/02
*00–04–C–01–TPA, Tampa, FL	03/22/02	$124,728,400	$133,732,200	10/01/07	07/01/06

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*92–01–I–04–BWI, Baltimore, MD	03/26/02	$225,826,453	$225,826,453	10/01/02	11/01/02
94–02–C–01–BWI, Baltimore, MD	03/26/02	NA	NA	04/01/09	04/01/09
95–03–U–01–BWI, Baltimore, MD	03/26/02	NA	NA	04/01/09	04/01//09
*00–01–C–01–VPS, Valparaiso, FL	03/28/02	$38,358,314	$34,278,718	07/01/28	11/01/19

(**Note**: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Cedar Rapids, IA, this change is effective on May 1, 2002. For Tampa, FL, Valparaiso, FL, and Baltimore, MD, this change is effective on June 1, 2002.

Issued in Washington, DC on May 24, 2002.

Barry Molar,

Manager, Airports Financial Assistance Division.

[FR Doc. 02–13711 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Draft Environmental Impact Statement; Summit County, Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), have prepared a Draft Environmental Impact Statement (EIS) for proposed transportation improvements to State Highway 9, Frisco to Breckenridge in Summit County, Colorado. The Draft EIS identifies the Four Build Alternatives and No-Action Alternative and their associated environmental impacts. Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing the contact person listed below under Addresses. Public reading copies of the Draft EIS are available at the locations listed under Supplementary Information.

DATES: A 45-calendar-day public review period will begin on May 31, 2002, and conclude on July 15, 2002. Written comments on the alternatives and impacts to be considered must be received by CDOT by July 15, 2002. A public hearing to receive oral comments on the Draft EIS will be held at the Summit High School on June 19, 2002.

ADDRESSES: Written comments on the Draft EIS should be addressed to Lisa Kassels, Project Manager, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011. Requests for a copy of the Draft EIS may be addressed to Lisa Kassels at the address above. Please see **SUPPLEMENTARY INFORMATION** section for a listing of available documents and formats in which they may be obtained. Copies of the Draft EIS are also available for public inspection and review. See Supplementary Information section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS or for additional information, contact: Mr. Scott Sands, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO, 80228, Telephone: (303) 969–6730 extension 362; or Lisa Kassels, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, Telephone: (303) 757–9156.

SUPPLEMENTARY INFORMATION:

Hearing Date and Location

Wednesday, June 19, 2002, 4:00 p.m. to 6:30 p.m. at Summit High School.

Copies of the Draft EIS are available in hard copy format for public inspection at:

- CDOT Headquarters, Public Information Offices, 4201 Arkansas St., Room 277, Denver, CO 80222, 303–757–9228
- CDOT Region 1, 18500 E Colfax Avenue, Aurora, CO 80011, 303–757–9371
- CDOT Office of Environmental Programs, 1325 South Colorado Boulevard, Suite B400, Denver, CO 80222, 303–757–9259
- Summit County Engineering Department, 37 County Rd. 1005, Frisco, CO 80443, 970–668–4200
- Town of Breckinridge Engineering Department, 150 Ski Hill Rd., Breckenridge, CO 80424, 970–547–3191
- Town of Frisco Town Clerk, 1 Main St. Frisco, CO 80443, 970–668–5276
- Summit County Library—Frisco Branch, 37 County Rd. 1005, Frisco, CO 80443 970–668–5555
- Summit County Library—Breckenridge Branch, 504 Airport Rd., Breckenridge, CO 80424, 970–453–6098
- CDOT Mountain Residency Office, west side of Eisenhower Tunnel at I–70, Silverthorne, CO 80498, 303–512–5750
- Federal Highway Administration, Colorado Division Office, 555 Zang Street, Room 250, Lakewood, CO 80228, 303–969–6730 extension 362

Background

This Draft EIS provides a detailed evaluation of the proposed transportation improvements for SH 9 between Breckenridge and Frisco. The study area lies within Summit County, Colorado. The study area extends approximately 14.5 kilometers (9 miles) from the northern end of Frisco at approximate milespost 97 to the southern limit of Breakenridge at approximate milepost 85. This Draft EIS includes an examination of the purpose and need, alternatives under consideration, travel demand, affected environment, environmental consequences, and mitigation measures as a result of the improvements under consideration. Four build alternatives and a No-Action Alternative are presented in the Draft EIS and are under consideration by FHWA and CDOT.

The FHWA, CDOT, and other local agencies invite interested individuals, organizations, and Federal, State, and local agencies to comment on the evaluated alternatives and associated social, economic, or environmental impacts related to the alternatives.

Issued on: May 17, 2002.

Douglas Bennett,

Assistant Division Administrator, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 02–12776 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12395]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SIR THOMAS MORE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before July 1, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12395. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested.

Name of vessel: SIR THOMAS MORE. *Owner:* Danny Kopels.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* ''LOD: 40.0 feet, Gross: 24 Tons, Net: 21 Tons''

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* ''Small group (6 or fewer passengers) pleasure charters; small group scuba diving training sailing instruction and excursions.'' ''The Pacific Ocean extending from San Francisco Bay on the north, to the Mexican border on the south.''

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1978. *Place of construction:* Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* ''. . . I believe that I will be appealing to a different segment of the market than the commercial dive vessels, and will have no impact upon their operations. As far as sailing instruction is concerned, most sailing schools rely on boats in the 30ft and under size range for their instruction.''

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* ''None.''

Dated: May 28, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–13703 Filed 5–30–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34185]

Cloquet Terminal Railroad Company, Inc.—Acquisition and Operation Exemption—Duluth & Northeastern Railroad Company

Cloquet Terminal Railroad Company, Inc. (Cloquet), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Duluth & Northeastern Railroad Company (DNRC) and operate the assets currently owned by DNRC, including a line of railroad between milepost 0.0 and milepost 1.24, a distance of 1.24 miles in Cloquet, Carlton County, MN.[2]

Cloquet indicates that it intends to consummate the transaction on or after the effective date of the exemption (7 days after the exemption was filed).[3]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34185, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Diane P. Gerth, Leonard, Street and Deinard, 150 South Fifth St., Suite 2300, Minneapolis, MN 55402.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: May 23, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–13508 Filed 5–30–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Cloquet is a wholly owned subsidiary of Northern Holdings LLC (Northern), a noncarrier, which has been or will be renamed Sappi Cloquet LLC. Northern has entered into an Asset Purchase Agreement with Potlatch Corporation, DNRC's owner, pursuant to which Cloquet will acquire and operate the assets of DNRC.

[2] According to Cloquet, there is additional trackage that is industrial or spur trackage serving only an adjacent paper production facility.

[3] Cloquet certifies that its projected annual revenues will not exceed those that would quality it as a Class III carrier.

Corrections

Federal Register

Vol. 67, No. 105

Friday, May 31, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

May 23, 2002.

Correction

In notice document 02–13473 appearing on page 37414 in the issue of Wednesday, May 29, 2002, make the following corrections:

1. In the third column, the date after the subject heading should read as set forth above.

2. In the same column, after the heading **DATE AND TIME:**, the date ''May 15, 2002'', should read ''May 30, 2002''.

[FR Doc. C2–13473 Filed 5–30–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 31, 2002

Part II

Small Business Administration

13 CFR Parts 121 and 123
Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

RIN 3245–AE93

Small Business Size Standards; Travel Agencies; Economic Injury Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: SBA is finalizing the size standard promulgated in the interim final rule published on March 15, 2002 that increased the size standard for Travel Agencies, North American Industry Classification System (NAICS) code 561510, from $1 million to $3 million for economic injury disaster loan (EIDL) assistance attributed to the September 11, 2001 terrorist attacks on the World Trade Center, New York, NY and the Pentagon, Arlington, VA. This rule also changes the time at which size status is determined for EIDL assistance in connection with the September 11, 2001 attacks. This final rule is published in conjunction with SBA's final rule that increases the size standard for travel agencies for all Federal small business assistance programs. This action better defines the size of businesses in this industry that SBA believes should be eligible for Federal EIDL assistance.

DATES: This rule is effective May 31, 2002.

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

SUPPLEMENTARY INFORMATION: SBA is publishing elsewhere in this issue of the **Federal Register** a separate final rule addressing the travel agencies size standard for all small business programs.

EIDL Assistance

On March 15, 2002, SBA issued an interim final rule that increased the size standard for the Travel Agencies industry, NAICS code 561510, from $1 million to $3 million for EIDL assistance. 67 FR 11874. We believe that this action better defines the size of businesses in this industry that should be eligible for EIDL loans as a result of the September 11, 2001 Terrorist Attacks, 13 CFR Subpart G, and for EIDL assistance to businesses in the declared disaster areas under 13 CFR Subpart D (September 11 EIDL assistance), especially after the September 11, 2001 terrorist attacks. The events of September 11, 2001 directly impacted travel agencies. The traveling public cancelled and rescheduled existing travel arrangements and many postponed further travel. Consequently, airlines rescinded travel agencies' commissions on flights cancelled or rescheduled due to the attacks. Thus, many small travel agencies saw their business decline by 20 to 50 percent. On January 23, 2002, SBA issued an inflation adjustment as an interim final rule which increased revenue based size standards by 15.8 percent and which had an applicability date of September 11, 2001, for the purpose of eligibility for September 11 EDIL assistance resulting from the terrorist attacks. 67 FR 3041. The travel agencies' $1 million size standard was not increased because SBA decided to handle this industry by separate rulemaking.

At the time of the attacks, SBA was preparing a proposed adjustment to the travel agencies size standard. The proposed rule, which was issued simultaneously with the interim final rule, resulted from recent changes in the Travel Agencies industry and SBA's analysis of the latest industry data from the U.S. Bureau of the Census, Federal contract award data, and information provided by travel agencies trade associations.

SBA found that there was an urgent need to make disaster loans available to travel agencies that should be considered small, but that did not qualify under SBA's existing size standard of $1 million. For more information on the reasons for establishing a $3 million size standard, see the March 15, 2002 interim final rule and the proposed rule.

Change in the Date of Determination of Size Status

SBA changed the date of determination of the small business size status for purposes of EIDL assistance attributable to the September 11, 2001 attacks, in order to be able to assist small businesses before the deadlines for application of September 11, 2001 EIDL assistance under 13 CFR Subpart G expired.

Discussion of Comments on the Interim Final Rule

SBA received no comments in response to the interim final rule. However, in support of the proposed rule to increase the travel agencies' size standard for all small business programs, one commenter endorsed SBA's actions on EIDL assistance. This commenter stated that the need to increase the standard became apparent after the September 11, 2001 terrorist attacks when many travel agencies were disqualified for EIDL assistance due to their revenue size. SBA recognized that serious harm would result to the Travel Agencies industry by not publishing, as an interim final rule, the increase to the travel agencies' size standard for EIDL assistance resulting from September 11, 2001 terrorist attacks. As pointed out by the commenter, because of the $1 million size standard, travel agencies were being harmed by being disqualified for EIDL assistance because of their revenue size. For more information, see ''Justification for Publication as an Interim Final Rule'' in SBA's Interim Final Rule of March 15, 2002. 67 FR 11874 at 11878–79.

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

This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch.35, SBA has determined that this rule would not impose new reporting or record keeping requirements, other than those already required of SBA. For purposes of Executive Order 13132, SBA had determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order. The Office of Management and Budget (OMB) reviewed this rule as a ''significant regulatory action'' for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. Below is a regulatory impact analysis of this size standard change. SBA received no comments on the analysis presented in the interim final rule.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry

differences. The preamble of the interim final rule explained the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for travel agencies is needed to better define small businesses in this industry for purposes of September 11 EIDL assistance.

In addition, the interim final rule explained SBA's reasons for changing the date size status is determined for September 11, 2001 EIDL assistance. SBA believes that this change is necessary to assist travel agencies and other small businesses that should have been considered small for purposes of September 11, 2001 EIDL assistance. On January 23, 2002, SBA increased its size standards to reflect the effects of inflation since 1994. Businesses recognized as small under that rule are able to file applications for September 11, 2001 EIDL assistance. Moreover, of all the industries severely impacted by the September 11 attacks, the Travel Agencies industry is the only one that did not have its size standard adjusted to reflect the effect of inflation. SBA did not increase the size standard for this industry at that time since SBA was already in the process of re-evaluating the travel agencies size standard to reflect changing industry conditions. The combination of these unique circumstances necessitate changing the date of determination of size status for purposes of September 11, 2001 EIDL assistance only. SBA does not foresee the need to apply this approach in the future.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for EIDL assistance resulting from the September 11, 2001 attacks. Under this rule, 732 additional firms may obtain small business status and become eligible for this assistance. SBA estimates that $1.3 to $2.8 million in additional EIDL assistance may result from increasing the size standard for travel agencies. SBA also estimates an additional $2.3 million to $2.7 million in EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of travel agencies and small businesses in the industries covered by the size standard inflation adjustment.

The revision to current size standards for travel agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the reasons and objective of the rule; SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objectives of This rule?

The revision to the travel agencies size standard more appropriately defines the size of businesses in this industry that SBA believes should be eligible for EIDL assistance. The change in date status for the sole purpose of September 11, 2001 EIDL assistance is necessary to assist travel agencies and other small businesses that should have been considered small for the purposes of this assistance.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis (IRFA)?

There were no comments received in response to the IRFA in the Interim Final Rule.

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

Within the Travel Agencies industry, 21,505 out of 22,687 businesses are small under the $1 million size standard for travel agencies. Thus, with the increase in the size standard to $3 million, the likely impact of this rule would be limited to the 732 small businesses that gain small business status as a result of this rule. This is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. Businesses becoming eligible for SBA EIDL assistance as a result of this rule cumulatively generate approximately $1.0 billion out of a total of $10 billion in revenues. The small business coverage for EIDL assistance for travel agencies will increase by 10 percent of total receipts.

Only a small proportion of businesses utilize SBA's EIDL assistance program. It is difficult to estimate the number of small businesses that will apply for EIDL assistance, as this program focuses solely on disasters that occur within the United States and its territories. Thus, loan assistance depends on the number of disasters, the severity of the disaster, geographic condition, and the type of industries affected by the disaster. However, in fiscal year 2001, 917 travel agencies applied for EIDL assistance, of which half were declined because of credit and other eligibility requirements, and 28 were declined due to size requirements. In addition, prior to the publication of the interim final rule on March 15, 2002, 144 travel agencies applied for September 11 EIDL assistance. As a result of the interim final rule 36 additional travel agencies have applied for September 11 EIDL assistance as of May 10, 2002.

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

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard or change in date status does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards and changing the status date expands access to SBA programs that assist small businesses, but these actions do not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefit to businesses that will obtain small business status as a

result of this final rule is the September 11 EIDL assistance. SBA estimates that $1.3 to $2.8 million in September 11 EIDL assistance may result from increasing the size standard for travel agencies. SBA also estimates an additional $2.3 million to $2.7 million in September 11 EIDL assistance to businesses that became eligible small businesses as a result of the recent inflation adjustment to monetary size standards. These estimates are based on participation rates and EIDL loan amounts of travel agencies and small businesses in the industries covered by the size standard inflation adjustment. The small increase in EIDL business loans that may result from the size standard increase will not crowd out other small travel agencies or small businesses from obtaining assistance as a result of the September 11 terrorist attacks since funding continues to be available for this program.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15 U.S.C. 631 and 13 CFR 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. For certain industries, including the Travel Agencies industry, receipts are measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. The changing structure of the industry, Census Bureau data, Federal contracting data, travel agencies trade association data, and SBA EIDL assistance data support increasing the size standard to $3 million.

(b) What Alternatives Did SBA Reject?

At the time of the September 11, 2001 Terrorist Attacks, SBA was preparing a proposed adjustment to the travel agencies size standard. SBA found that under the $1 million size standard for travel agencies, small travel agencies were no longer competitive in the corporate and government travel markets. Because of technology advances and demands by corporate and government clients, most firms must adapt to deal with higher costs to maintain their businesses, making greater investments in technology to meet the needs of their customers, and switching to a fee-based compensation system from a commission-based system. Data from the GSA Travel Management Center's Program Office also showed that small travel agencies obtained only 3.5 percent of total revenues to travel agencies, even though small travel agencies account half of total industries revenues. In addition, many travel agencies were declared ineligible because of size reasons for EIDL assistance as a result of the September 11, 2001 terrorist attacks.

SBA considered two additional alternatives to this rule. First, adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the interim final rule SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless an industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of travel agencies are significantly below those of the nonmanufacturing anchor group industries. To establish a $6 million size standard would increase the size standard six fold and assist successful travel agencies that tend to operate at several locations and potentially take away assistance from small travel agencies this rule is intended to assist. Thus, a size standard below the anchor size standard is appropriate for this industry.

Second, SBA considered relevant to this rule comments received in response to our March 15, 2002 proposed rule to increase the size standard for travel agencies for all small business programs. For the proposed rule, SBA considered the commenters' recommendation to not increase the travel agencies size standard beyond the amount of inflation since 1994 (15.8 percent). These commenters raised three significant issues pertaining to the percentage of travel agencies defined as small, the overall decline of the industry, and the competitiveness of currently defined small businesses. SBA rejected these comments because it had also received comments supporting the $3 million size standard that used, in part, similar facts to show the proposed size standard was needed. Also, SBA's analysis of the changing structure of the industry, Census Bureau data, Federal contracting data, and EIDL assistance data support the need and basis to support increasing the size standard above $1 million.

List of Subjects

13 CFR Part 121

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

13 CFR Part 123

Disaster assistance, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

PART 121—SMALL BUSINESS SIZE REGULATIONS

PART 123—DISASTER LOAN PROGRAM

Accordingly, for the reasons set forth in the preamble, the interim rule amending parts 121 and 123 of title 13 of the Code of Federal Regulations which was published at 67 FR 11874 on March 15, 2002, is adopted as a final rule without change.

Dated: May 15, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–13604 Filed 5–30–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AE95

Small Business Size Standards; Travel Agencies

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is adopting the proposed increase to the size standard for Travel Agencies, North American Industry Classification System (NAICS) code 561510, from $1 million to $3 million. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

DATES: This rule is effective July 1, 2002.

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

SUPPLEMENTARY INFORMATION: This final rule applies to all SBA small business programs. SBA is publishing elsewhere in this issue of the **Federal Register** a separate final rule addressing the Travel Agencies size standard for purposes of

economic injury disaster loan (EIDL) assistance attributed to the September 11 terrorist attacks.

On March 15, 2002, SBA issued a proposed rule to increase the size standard for Travel Agencies, NAICS code 561510, from $1 million to $3 million (67 FR 11881). We believe that this action will better define the size of businesses in this industry that should be eligible for Federal small business assistance programs. SBA proposed the new size standard based on recent changes in the Travel Agencies industry and its analysis of the latest industry data from the U.S. Bureau of the Census, Federal contract award data, and information provided by travel agencies trade associations. For more information on the reasons for proposing a $3 million size standard, see the March 15, 2002, proposed rule.

SBA is adopting the $3 million proposed size standard for the Travel Agencies industry. The comments received endorsing the proposal provided support to SBA's basis for the size standard and the need for an increase. The comments opposing the proposal did not provide compelling reasons for SBA to consider a different size standard.

Discussion of Comments on the Proposed Rule

SBA received five timely comments on the proposed size standard. Two of the comments were from travel agencies trade associations and three were from firms in the industry.

In summary, two commenters supported the proposed size standard while one commenter supported a smaller increase to $2 million. Two commenters submitted their responses to SBA's inflation increase to its monetary size standard, published in the **Federal Register** on January 22, 2002 (67 FR 3041). Both provided detailed reasons for supporting an increase to the Travel Agencies size standard no greater than the 15.8 percent inflation factor applied to most monetary-based size standards. (The interim final rule did not apply an inflation adjustment to the Travel Agencies industry.) Both commenters also provided detailed reasons for their opposition to the proposed $3 million size standard. Below is a summary of the comments received on the proposed rule.

Support for Proposed Increase to $3 Million

Two trade associations submitted comments supporting the size standard increase to $3 million. One association cited a number of changes in the Travel Agencies industry as supporting the need for a higher size standard. It stated that it is witnessing a dramatic change in the structure of the travel agencies industry distribution; the substitution of up-front capital intensive investments for the more flexible labor costs of prior travel processes; and the drying up of the pool of eligible small businesses performing government and corporate travel services. It also stated that the collapse of the airline and car rental commission structure creates a greater need for financially viable small travel agencies that can survive in the new corporate/government arena. It concluded by agreeing with SBA's analysis for increasing the size standard.

The other association also cited changes in the marketplace for supporting a higher size standard and the need for assistance of SBA programs on the part of more travel agencies. It cited a 1998 Lou Harris survey of travel agencies showing that since 1995 the number of firms with revenues under $1 million has decreased by 35 percent and that the number with revenues over $2 million increased by 46 percent. The commenter attributed this pattern to the advancement of technology and a more diverse revenue base. It also stated that a size standard increase would restore competitive viability to locally-owned family businesses and encourage more small travel agencies to explore Federal contracting opportunities. This increase will provide an opportunity for hundreds of travel agencies to take advantage of SBA's loan programs which were ''off limits'' because many travel agencies were considered large under the $1 million size standard. The association stressed that this was made apparent when many travel agencies found themselves ineligible for Economic Injury Disaster Loans after the September 11, 2001, Terrorist Attacks.

Opposition to Proposed Increase to $3 Million

Increase Size Standard to $2 Million

One firm stated that it supported an increase to $2 million ''as a compromise'' to the proposed $3 million size standard. It claimed that ''this would satisfy most travel agencies.'' This firm, however, did not provide detailed reasons, statistics, or other data to support its position.

Increase No Greater Than 15.8 Percent Inflation Adjustment

Two commenters opposed an increase to $3 million and recommended applying the 15.8 percent inflation adjustment that SBA recently applied to other monetary-based size standards. One commenter contended that increasing the size standard to $3 million is ''tantamount to declaring the entire Travel Agencies industry small except for the handful of mega-agencies.'' The commenter stated that under the current size standard, 18,000 travel agencies are small and that 200–300 agencies are mid-sized. This commenter also contends that ''a small business travel agency is one that is actively owner operated'' and that it outgrows being small when it needs a ''high amount of internal structure is necessary.'' The commenter believes that the $1 million size standard has been effective in helping small travel agencies to develop and then compete against larger travel agencies. The commenter provided examples of two travel agencies that grew over $1 million and went on to successfully compete against large travel agencies for Federal travel contracts.

The other commenter that recommended only an inflation adjustment to the travel agencies size standard provided two reasons for its position. First, it contended that increasing the size standard to a level between $2.5 million and $5 million would include all travel agencies as small except for 10–12 ''mega-sized'' agencies. Information was provided showing that the average size travel agency is about $125,000 in commissions and fees, and that 98 percent of the agencies qualify as small under the current size standard. The commenter believes these facts suggest that no large increase in the size standard is needed. Second, it cited industry statistics showing that the Travel Agencies industry is declining in all aspects of sales, revenue, number of locations, and number of employees. This contraction is making the industry smaller, and thus, an increase to the size standard beyond an inflation adjustment is inappropriate.

Response to Significant Issues Raised by Comments

The comments opposing the $3 million size standard raised three significant issues as reasons for their position. These issues are discussed below along with SBA's assessment and response to each of them.

1. Almost All Travel Agencies Are Defined as Small Under a $3 Million Size Standard

Two commenters contend that only an inflation adjustment to the travel agencies size standard is warranted since almost all travel agencies would be defined as small under a $3 million size standard. SBA does not agree with

this position. It is correct that under the current size standard 95 percent of the firms are small and that by increasing the size standard to $3 million, 732 additional firms will be eligible for SBA assistance programs. The total percentage of firms that will be small would increase to 98 percent of the 22,687 travel agencies and their 29,332 establishments. The Census Bureau's data also show that over 450 firms will be considered other than small businesses, not 10–12 as one commenter suggested. In fact, the Census Bureau's data shows that these 450 firms, on average, generate $7.3 million in revenues and that the 70 largest travel agencies generate, on average, $37 million in revenues.

The coverage of a size standard based on the percent of small businesses masks the more important question as to the economic significance within the industry of small businesses. The 450 travel agencies not defined as small generate 47 percent of total Travel Agencies' industry revenues while the 22,237 travel agencies with $3 million or less in revenues generate 53 percent. In relations to other SBA size standards, a size standard that results in small business coverage of approximately half of industry revenues is a reasonable and widely accepted size standard. Thus, we disagree with the argument that a high percentage of travel agencies defined as small is a reason not to adopt a $3 million size standard.

2. Travel Agencies Industry Is Declining

One commenter pointed out that the revenues and number of travel agencies is declining as a result of changes in the industry and the terrorist attacks of September 11, 2001. SBA disagrees that these trends serve as the basis for not adopting a $3 million size standard. Rather, SBA believes, as did the two travel agencies associations that supported the proposed $3 million size standard, that the industry trends affecting compensation, technology, and government and corporate requirements justify a higher size standard. SBA realizes the impact on travel agencies evolving over the last several years from a commission-based one to a fee-based industry. These are due to the reduction in airline commissions and the advances in technology, specifically, the use of the internet. Because of technology advances and demands by corporate and government clients, most firms must adapt to the higher costs of maintaining their businesses, making greater investments in technology to meet the needs of their customers, and switching to a fee-based compensation system from a commission-based system. A higher size standard makes travel agencies between $1 million and $3 million eligible for Federal small business programs that can help them meet these new challenges and become competitive with larger travel agencies. Furthermore, the industry trends of the last several years have had the greatest impact on the smallest travel agencies. Travel agencies with $1 million or less will continue to have access to small business programs. SBA strongly believes that travel agencies with up to $3 million need and should also have access to these programs.

3. Travel Agencies Above $1 Million in Size Are Competitive

One commenter contended that SBA programs have been effective in developing small travel agencies to be competitive after they have grown beyond the $1 million level; and therefore, an increase beyond an inflation adjustment is not needed. SBA disagrees with this comment. Although some small travel agencies have successfully competed for Federal travel contracts against large travel agencies, the experiences of small travel agencies in Federal contracting clearly indicate that they are at a disadvantage. As shown in the proposed rule, small travel agencies have obtained an extremely small share of Federal contracting dollars. Data from the U.S. General Services Administration's (GSA) Travel Management Center's Program Office showed small travel agencies obtaining only 3.5 percent of total revenues to travel agencies, even though small travel agencies account for half of total industry revenues. The reasons for this outcome are directly related to change in the structure of how travel agencies and government clients, as well as corporate clients, do business. Travel agencies competing on Federal and corporate travel service contracts must be able to meet technological requirements that include interfacing with a Federal agency's, or corporation's systems, as well as various airline ticketing services, and other ticketing and reservation services. Today's travel agencies must also be able to handle various geographical requirements. These were discussed in the proposed rule and were part of the reasons given by the comments supporting the $3 million size standard. The opposing commenter's argument is not consistent with the overwhelming evidence to the contrary.

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

This is not a major rule under the Congressional Review Act, 5 U.S.C. 800. For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, SBA has determined that this rule would not impose new reporting or recordkeeping requirements, other than those already required of SBA. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12988, SBA has determined that this rule is drafted, to the extent practicable, in accordance with the standards set forth in that Order. The Office of Management and Budget (OMB) has determined that the final rule is a ''significant regulatory action'' for purposes of Executive Order 12866. Size standards determine which businesses are eligible for Federal small business programs. Below is a regulatory impact analysis of this size standard change. SBA received no comments on the analysis presented in the proposed rule.

Regulatory Impact Analysis

i. Is There a Need for the Regulatory Action?

SBA is chartered to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To effectively assist intended beneficiaries of these programs, SBA must establish distinct definitions of which businesses are deemed small businesses. The Small Business Act (15 U.S.C. 632(a)) delegates to the SBA Administrator the responsibility for establishing small business definitions. It also requires that small business definitions vary to reflect industry differences. The preamble of the proposed rule explained the approach SBA follows when analyzing a size standard for a particular industry. Based on that analysis, SBA believes that a revision to the current size standard for travel agencies is needed to better define small businesses in this industry.

ii. What Are the Potential Benefits and Costs of This Regulatory Action?

The most significant benefit to businesses obtaining small business status as a result of this rule is eligibility for Federal small business assistance programs. Under this rule, 732 additional firms may obtain small

business status and become eligible for these programs. These include SBA's financial assistance programs and Federal procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, small businesses located in Historically Underutilized Business Zones (HUBZone), as well as those awarded through full and open competition after application of the HUBZone or small disadvantaged business price evaluation adjustment. Other Federal agencies use SBA size standards for a variety of regulatory and program purposes. SBA does not have information on each of these uses to evaluate the impact of size standards changes. In researching the Travel Agencies industry, SBA contacted representatives of GSA and the Depart of Defense. These two agencies account for the largest proportion of Federal contracting for travel services. Also, discussions with a major travel agencies association indicated that SBA's travel agencies size standard are not used for other Federal programs or regulations, other than those discussed in this rule, but are at times referred to by the private sector as guidelines for various purposes. In cases where SBA size standards are not appropriate, an agency may establish its own size standards with the approval of the SBA Administrator (see 13 CFR 121.801). Through the assistance of these programs, small businesses may benefit by becoming more knowledgeable, stable, and competitive businesses.

The benefits of a size standard increase to a more appropriate level would affect three groups. First, businesses that benefit by gaining small business status from the proposed size standard and use small business assistance programs. Second, growing small businesses that may exceed the current size standard in the near future and who will retain small business status from the proposed size standard. Third, Federal agencies that award contracts under procurement programs that require small business status.

Newly defined small businesses would benefit from the SBA's 7(a) Guaranteed Loan Program. SBA estimates that approximately $400,000 in new Federal loan guarantees could be made to these newly defined small businesses. This represents approximately 10 percent of the $3.8 million in loans that were guaranteed by SBA under this financial program to travel agencies in FY 2001. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. Thus increasing the size standard will likely result in only a small increase in small business guaranteed loans to travel agencies, and the $400,000 estimated figure may overstate the actual impact.

The newly defined small businesses would also benefit from SBA's economic injury disaster loan program. Since this program is contingent upon the occurrence and severity of a disaster, no meaningful estimate of benefits can be projected.

SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $347 million in sales out of approximately $9 billion in total Federal travel expenditures under the small business set-aside program, the 8(a), Small Disadvantaged Business, and HUBZone programs, or unrestricted contracts. Since most of these travel dollars will pass through to airlines, hotels, and automobile rental companies, SBA estimates actual revenues to travel agencies will range between $25 million and $42 million (7 percent to 12 percent of the estimated $347 million in sales). This also represents approximately $36 million of additional Federal contracts that may be awarded to businesses becoming newly designated small businesses. These estimates reflect a 10 percent increase in the awards to small businesses that the Federal government expends for travel services.

Federal agencies may benefit from the higher size standards if the newly defined and expanding small businesses compete for more set-aside procurements. The larger base of small businesses would likely increase competition and would lower the prices on set-aside procurements. A large base of small businesses may create an incentive for Federal agencies to set aside more procurements creating greater opportunities for all small businesses. Small business opportunities will be enhanced in open procurements as they gain experience in Federal contracting through the set-aside and other small business procurement preference programs. Large businesses with small business subcontracting goals may also benefit from a larger pool of small businesses by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that 732 additional firms become active in Government programs, this may entail some additional administrative costs to the Federal government associated with additional bidders for Federal small business SBA's procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's PRO-Net data base program. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. These costs are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements.

The costs to the Federal government may be higher on some Federal contracts. With greater number of businesses defined as small, Federal agencies may choose to set-aside more contracts for competition among small businesses rather than using full and open competition. The movement from unrestricted to set-aside is likely to result in competition among fewer bidders for a contract. Also, higher costs may result if additional full and open contracts are awarded to HUBZone and SDB businesses as a result of a price evaluation preference. The additional costs associated with fewer bidders, however, are likely to be minor since, as a matter of policy, procurements may be set-aside for small businesses or reserved for the 8(a), HUBZone Programs only if awards are expected to be made at fair and reasonable prices.

The proposed size standard may have distributional effects among large and small businesses. Although the actual outcome of the gains and loses among small and large businesses cannot be estimated with certainty, several trends are likely to emerge. First, a transfer of some Federal contracts to small businesses from large businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set-aside more Federal procurements for small businesses. Also, some Federal contracts may be awarded to HUZone or small disadvantaged businesses instead of a large businesses since those two categories of small business are eligible for price evaluation adjustment for contracts competed on a full and open basis. Similarly, currently defined small businesses may obtain fewer Federal contacts due to the increased competition from more businesses defined as small. This transfer may be offset by a greater number of Federal procurements set-aside for all small businesses. The number of newly defined and expanding small businesses that were willing and able to sell to the Federal Government would limit the

potential transfer of contracts away from large and currently defined small businesses. The potential distributional impacts of these transfers may not be estimated with any degree of precision since the data on the size of business receiving a Federal contract are limited to identifying small or other-than-small businesses.

The revision to current size standards for travel agencies is consistent with SBA's statutory mandate to assist small businesses. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Reviewing and modifying size standards when appropriate ensures that intended beneficiaries have access to small business programs designed to assist them. Size standards do not interfere with state, local, and tribal governments in the exercise of their government functions. In a few cases, state and local governments have voluntarily adopted SBA's size standards for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Final Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), this rule may have a significant impact on a substantial number of small entities. Immediately below, SBA sets forth a final regulatory flexibility analysis (FRFA) of this rule addressing the reasons and objective of the rule; SBA's description and estimate of small entities to which the rule will apply; the projected reporting, record keeping, and other compliance requirements of the rule; the relevant Federal rules which may duplicate, overlap or conflict with the rule; and alternatives to the final rule considered by SBA that minimize the impact on small businesses.

(1) What Is the Need for and Objectives of This Rule?

The revision to the size standard for the Travel Agencies industry more appropriately defines the size of businesses in this industry that SBA believes should be eligible for Federal small business assistance programs. Significant changes in the industry and in the requirements of government and corporate clients support the need for a different size standard.

(2) What Significant Issues Were Raised by the Public Comments in Response to the Initial Regulatory Flexibility Act (IRFA)?

There were no comments received in response to the IRFA in the proposed final rule.

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

Within the Travel Agencies industry, 21,505 out of 22,687 businesses are currently small. Only a small proportion of businesses in this industry utilize SBA programs. In SBA's PRO-Net (a SBA database of small businesses interested in contracting with the Federal Government) 166 travel agencies are currently registered. In fiscal year 2001, 40 small travel agencies received 7(a) guaranteed loans. Thus, with an increase in the size standard to $3 million, the likely impact of this rule would be limited to the 732 firms that will gain small business status as a result of this rule. This is based on the U.S. Census Bureau's special tabulation of the 1997 Economic Census for SBA's Office of Size Standards, using size distribution of firms' tables. The following table shows these data for the Travel Agencies Industry.

TABLE 1.—TRAVEL AGENCIES INDUSTRY DATA

Category	Travel agencies
Total Businesses	22,687
Current Small Businesses	21,505
Small Businesses with the adoption of this rule	22,237
Small Businesses Registered in PRO-Net	166
Small Businesses with 7(a) Loans	54

The 732 travel agencies gaining small business status will become eligible to seek available SBA assistance provided that they meet other program requirements. These businesses cumulatively generate approximately $1.0 billion out of a total of $10 billion in revenues. The small business coverage in the Travel Agencies industry will increase by 10 percent of total industry receipts.

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

This rule does not impose any new information collection requirements from SBA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. A new size standard does not impose any additional reporting, record keeping or compliance requirements on small entities. Increasing size standards expands access to SBA programs that assist small businesses, but does not impose a regulatory burden as they neither regulate nor control business behavior.

(5) What Are the Steps SBA Has Taken To Minimize the Significant Economic Impact on Small Businesses?

Most of the economic impact on small businesses will be positive. The most significant benefits to businesses that will obtain small business status as a result of this final rule are (1) eligibility for the Federal government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses, and businesses located in Historically Underutilized Business Zones; and (2) eligibility for SBA's financial assistance programs such as 7(a), 504 business loans, and EIDL assistance. SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $347 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents approximately 4 percent of the $9 billion in total Federal travel expenditures.

Currently defined small businesses are obtaining a very small share of Federal contracting relative to their share of total industry revenues. (On GSA contracts, small travel agencies obtained 3.5 percent of total contracting dollars while their share of total industry revenues is 53 percent.) Increasing the size standard to $3 million will not significantly impact currently defined small businesses since contract requirements already make it difficult for them to successfully compete. This outcome will continue unless small travel agencies can grow to a size that enables them to develop and finance the capabilities to perform the Federal travel management requirements. In addition, the small increase in 7(a) business loans that may result from the size standard increase will not crowd out other small travel agencies or small businesses from obtaining SBA financial assistance. SBA estimates that 7(a) loans may increase by $400,000 out of program that approve approximately 50,000 loans for over $9 billion per year.

(6) Alternatives

(a) What Are the Legal Policies or Factual Reasons for Selecting the Alternative Adopted in the Final Rule?

As stated in the Small Business Act 15 U.S.C. 631 and 13 CFR part 121, SBA establishes size standards based on industry characteristics and for non-manufacturing concerns on the basis of the annual average gross receipts of a business concern over a period of three years. For certain industries, including the Travel Agencies industry, receipts are measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue. The changing structure of the industry, Census Bureau data, Federal contracting data, and SBA EIDL assistance data support increasing the size standard from $1 million to $3 million.

(b) What Alternatives Did SBA Reject?

SBA is adopting the $3 million size standard because under the current $1 million size standard for travel agencies. Small travel agencies are no longer competitive in the corporate and government travel markets. Because of technology advances and demands by corporate and government clients, most firm must adapt to deal with higher costs to maintain their businesses, making greater investments in technology to meet the needs of their customers, and switching to a fee-based compensation system from a commission-based system. Data from the GSA Travel Management Center's Program Office showed that small travel agencies obtained only 3.5 percent of total revenues to travel agencies, even though small travel agencies account for half of total industry revenues. In addition, many travel agencies were declared ineligible because of size reasons for EIDL assistance as a result of the September 11, 2001 terrorist attacks.

SBA considered two additional alternatives to this rule. First, adopting the $6 million anchor size standard to the Travel Agencies industry. As discussed in the proposed rule SBA applies the $6 million anchor size standard to the nonmanufacturing industries unless an industry's characteristics are significantly different from the typical nonmanufacturing industry. The analysis of the various industry factors show that the characteristics of travel agencies are significantly below those of the nonmanufacturing anchor group industries. To establish a $6 million size standard would increase the size standard six fold and assist successful travel agencies that tend to operate at several locations and potentially take away assistance from small travel agencies this rule is intended to assist. Thus, a size standard below the anchor size standard is appropriate for this industry.

Second, SBA considered the commenter's recommendation of increasing the travel agencies size standard by only the amount of inflation since 1994 (15.8 percent). These commenters raised three significant issues pertaining to the percentage of travel agencies defined as small, the overall decline of the industry, and the competitiveness of currently defined small businesses. As discussed in the supplementary information, SBA rejected these comments as a basis to adopt the inflation alternative. The comments received supporting the $3 million size standard used, in part, similar facts to show the proposed size standard was needed. Also, SBA's analysis of the changing structure of the industry, Census Bureau data, Federal contracting data, and SBA EIDL assistance support the need and basis to substantially increase the size standard above $1 million.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

Accordingly, for reasons stated in the preamble, the Small Business Administration amends part 121 of title 13 of the Code of Federal Regulations as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

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

2. In § 121.201, the table ''Small Business Size Standards by NAICS Industry'', under the heading Subsector 561—Administrative and Support Services, revise the entry for 561510 to read as follows:

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

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	Description (N.E.C.=not elsewhere classified)	Size standards in number of employees or millions of dollars
*	* * * * * * *	
	Subsector 561—Administrative and Support Services	
*	* * * * * * *	
561510	Travel Agencies	[10] $3
*	* * * * * * *	

Footnotes

* * * * * * *

10. NAICS codes 488510 (part), 531210, 541810, 561510 and 561920—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

* * * * *

Dated: May 15, 2002.

Hector V. Barreto,

Administrator.

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H.R. 4592/P.L. 107–183

To name the chapel located in the national cemetery in Los Angeles, California, as the ''Bob Hope Veterans Chapel''. (May 29, 2002; 116 Stat. 585)

H.R. 4608/P.L. 107–184

To name the Department of Veterans Affairs Medical and Regional Office Center in Wichita, Kansas, as the ''Robert J. Dole Department of Veterans Affairs Medical and Regional Office Center''. (May 29, 2002; 116 Stat. 586)

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